UNITED
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CRC

Convention on the
Rights of the Child

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26 June 1997

Original: ENGLISH

COMMITTEE ON THE RIGHTS OF THE CHILD

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 44 OF THE CONVENTION

Initial reports of States parties due in 1994

Addendum

AUSTRIA

[8 October 1996]

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INTRODUCTION

1. As can be seen from the statistics below, the Austrian population trend, and thus the structural composition of the Austrian population, is undergoing significant change. According to figures supplied by the Central Statistical Office, 1,685,612 children below the age of 18 were registered in Austria at the end of 1993, which represents 21.0 per cent of the total population. On the basis of the forecast decline in births, the number of under-18-year-olds will drop to 1,382,640 by the year 2030 and their proportion in the total population to 16.9 per cent.

Year	Number of under-18-year-olds	Share of total population
1961	1 877 727	26.5%
1971	2 137 693	28.5%
1981	1 903 037	25.2%
1993	1 685 612	21.0%
2020	1 432 738	17.4%
2030	1 382 640	16.9%

(Forecast) age structure trends in the years 2005 and 2025

Age	1994	2005	2025
0-14 years	1 400 000	1 365 000	1 164 000
15-29 years	1 930 000	1 365 000	1 164 000
30-39 years	1 161 000	1 254 000	1 042 000
40-49 years	1 002 000	1 290 000	1 019 000
50-59 years	839 000	988 000	1 216 000
60-69 years	774 000	874 000	1 175 000
70 years +	814 000	941 000	1 248 000

I. THE AUSTRIAN LEGAL FRAMEWORK IN ITS INTERNATIONAL DIMENSION

2. The Republic of Austria is party to a large number of multilateral agreements specifically and explicitly focusing on various aspects of the protection and/or legal position of children in the widest sense:

Convention internationale relative à la repression de la traite des blanches (1913);

International Convention for the Suppression of the Traffic in Women and Children (1922);

Convention concerning the Night Work of Young Persons employed in Industry (1924);

Convention concerning the Age for Admission of Children to Employment in Agriculture (1924);

Convention fixing the Minimum Age for Admission of Children to Industrial Employment (1936);

Convention concerning the Age for Admission of Children to Non-Industrial Employment (1936);

Convention sur la loi aplicable aux obligations alimentaires envers les enfants (1961);

Convention concernant la reconnaissance et l'éxecution des decisions en matière d'obligations alimentaires envers les enfants (1961);

Convention on the Recovery Abroad of Maintenance (1969);

Convention (No. 103) concerning Maternity Protection (1970);

Convention (No. 124) concerning Medical Examination of Young Persons for Fitness for Employment Underground in Mines (1972);

Convention concernant la competence des autorités et la loi applicable en matière de protection des mineurs (1975);

Convention sur la légitimation par mariage (1976);

Convention on Jurisdiction, Applicable Law and Recognition of Decrees relating to Adoptions (1978);

European Convention on the Legal Status of Children born out of Wedlock (1980);

European Convention on the Adoption of Children (1980);

European Convention on Recognition and Enforcement of Decisions concerning Custody of Children and on Restoration of Custody of Children (1985);

Convention on the Civil Aspects of International Child Abduction (1988).

3. In addition to this list, which aims to give an overall view of the multilateral agreements Austria is party to, Austria has signed a variety

of other multilateral agreements in the area of international law, some of which explicitly refer to the protection and/or legal position of children:

Slavery Convention (1928);

Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field of 12 August 1949 (1953);

Convention relating to the Status of Refugees (1955);

Convention for the Protection of Human Rights and Fundamental Freedoms (1958);

Convention concerning Forced or Compulsory Labour (1961);

Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices similar to Slavery (1964);

International Convention on the Elimination of All Forms of Racial Discrimination (1972);

European Social Charter (1969);

Convention on the Reduction of Statelessness (1974);

Convention on Reduction of Cases of Multiple Nationality and Military Obligations in Cases of Multiple Nationality (1975);

International Covenant on Civil and Political Rights (1978);

International Covenant on Economic, Social and Cultural Rights (1978);

Convention on the Elimination of All Forms of Discrimination against Women (1982);

Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I) (1982);

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1978).

II. GENERAL MEASURES OF IMPLEMENTATION (arts. 4 and 42)

4. Austria is among the group of countries which signed the Convention on the Rights of the Child on 26 January 1990, the first day of signing. Based on comprehensive groundwork (especially the *elaboration of the* "explanatory remarks" on the Convention), the Convention on the Rights of the Child was approved by the lower house of the Austrian Parliament - the Nationalrat - on 26 June 1992, and ratified by Austria through the deposit of the instrument of ratification on 6 August 1992 (promulgated in Federal Law Gazette No. 1993/7). On 5 September 1992, the Convention formally came into force.

A. Review of Austrian legislation relating to children: resolution E 156-NR XVIII.GP of the Austrian Parliament on the implementation of the rights of the child; experts' report on the Convention on the Rights of the Child

Special priority areas for policies relating to children in Austria

5. Notwithstanding the fact that the Nationalrat in its deliberations reached the preliminary conclusion that children's rights and the respect for their special needs as set forth in the Convention were already guaranteed to a large extent in Austria, Parliament unanimously passed a resolution (E-59-NR/XVIII.GP) on 26 June 1992 requesting the Federal Government to:

> "have independent experts review all laws and regulations pertaining to children to assess their conformity with the Convention on the Rights of the Child. By 1 July 1993 the experts would have to report to the Nationalrat regarding any reforms that might be required, to submit drafts for the respective bills, ... [and] to prompt a review of relevant legislation at the level of the Länder."

6. The Federal Ministry of the Environment, Youth and the Family fulfilled this request by asking a selected number of independent experts specialized in child law and the Austrian Institute of Legal Policy (Österreichisches Institut für Rechtspolitik) to analyse the compatibility of the legal and social system in Austria with the requirements and intentions set forth in the articles of the Convention. Moreover, all the authorities concerned, above all the federal ministries and governments of the Länder, were asked to review the regulations in their respective areas. Several NGOs were involved in the process from the very beginning, in particular as regards the appointment of scientists contributing to the expertise.

7. Although none of the experts found the Austrian legislation to be in any way contradictory to the Convention, several experts did make suggestions for improving children's rights in the spirit of the Convention. The authors of the report noted that even though it had been established that the protection of the child was guaranteed by Austrian law, it seemed appropriate, advisable and in accordance with the spirit of the Convention, to further improve both the legal position and the living conditions of children and young people in Austria.

8. The results of this comprehensive analysis are contained in the "Experts' report on the Convention on the Rights of the Child", and were submitted to the Austrian Nationalrat by the Federal Minister of the Environment, Youth and the Family in the summer of 1993. The experts' report on the Convention provides a deep insight into the situation of children in the most diverse spheres of life. In the period from 9 December 1993 to 9 June 1994, the report was discussed in detail during several meetings of a parliamentary sub-committee specifically established for this purpose, in which all the authors, several NGO representatives, as well as other experts, participated. Finally, the Nationalrat, in its plenary session of 14 July 1994, took note of the experts' report, along with the results of

the deliberations of the Committee on Family Affairs. The matter was brought to a close by the introduction of a comprehensive draft resolution regarding measures to realize the aims of the Convention on the Rights of the Child (Federal Law Gazette No. 7/1993) which was unanimously adopted by all political parties represented in Parliament. This resolution (E 156-NR XVIII.GP) contains a catalogue of aims, demands and measures regarding children's rights, including the incorporation of children's rights in constitutional law and their procedural revaluation, more possibilities for participation, adequate provision of child-care facilities, an independent institution safeguarding children's rights, continued integration of disabled children, improvements in the quality of products offered to children in the media, pilot-projects for mediation in family law, more decisive action against violence, better materials for sexual education, improved protection of minors against economic exploitation, and the enforcement of laws on aliens in line with the basic interests of the children concerned (the individual paragraphs of the resolution are quoted in the appropriate sections of this report). Initiated by the Convention on the Rights of the Child, this parliamentary resolution is unique in making the child the focus of consideration by the highest decision makers in our country. This is indeed a historic moment and a milestone for children's rights in Austria.

B. Campaign against violence in the family (in particular, any type of violence directed at children)

9. On the occasion of the International Year of the Family 1994, the Federal Minister of Justice, Dr. Nikolaus Michalek, the Federal Minister of the Interior, Dr. Franz Löschnak, the Federal Minister of the Environment, Youth and the Family, Maria Rauch-Kallat, as well as the Federal Minister for Women's Issues, Johanna Dohnal, started a campaign against violence in the family and, in particular, against any type of violence directed at children in the form of a "joint proposal" to the Council of Ministers on measures to combat violence in the family. The aim of this comprehensive series of measures was to provide the socially and physically weaker members of families with increased personal safety at home. (For more details, see chap. VI, sect. I., below).

C. Constitutional principle on non-self-execution of the Convention

10. Under article 9, paragraph 1 of the Austrian Constitution, the Convention on the Rights of the Child is regarded as an integral part of Austrian law; therefore, legal rules must be interpreted in such a way that they do not contradict the Convention. Under article 50, paragraph 1 of the Constitution, the Convention is an international treaty modifying and/or complementing existing legislation and was thus subject to approval by the Nationalrat. The Austrian Nationalrat approved the Convention with a reservation as to its execution saying that, under article 50, paragraph 2 of the Constitution, the Convention was to be implemented at the national level by the adoption of laws. This procedure is in accordance with article 4 of the Convention, which stipulates that States Parties shall undertake all appropriate legislative, administrative and other measures for the implementation of the rights recognized in this Convention.

11. In compliance with article 50, paragraph 2 of the Constitution, moreover, it was necessary to adopt a decision that the Convention should be translated into national legislation by taking the respective concrete legislative initiatives, because most of the regulations contained in the Convention lack the precision required for their immediate execution in national legislation under the principle of the rule of law (see art. 18 of the Constitution). Furthermore, a number of the Convention's articles just outline general aims and delegate their concrete implementation to the States Parties, stating that "they shall undertake all appropriate legislative, administrative and other measures for the implementation of the rights recognized in this Convention" (e.g. art. 3, para. 2; art. 4; art. 12, para. 2; art. 19, para. 1; art. 27, para. 4; art. 28, para. 2; art.32, para. 2; art.33; art. 35; art. 36; art. 38, para. 4; art. 39 and art. 40, para. 3).

12. Inasmuch as individual stipulations of the Convention guarantee fundamental rights and freedoms to children and adolescents (e.g. the right to life, etc.), these rights have already been constitutionally guaranteed by the wide range of fundamental rights and freedoms enshrined in the Austrian Constitution. Furthermore, Austria has carried out the constitutional mandate to implement the Convention on the Rights of the Child (art. 50, para. 2 of the Constitution) by pursuing a persistent, targeted plan of action:

(a) The "Experts' report on the Convention on the Rights of the Child" analysed the compatibility of Austrian legislation with the Convention and pointed out adaptations that might be required;

(b) On 14 July 1994, the Nationalrat passed the resolution E 156-NR XVIII.GP concerning measures for the implementation of the aims of the Convention on the Rights of the Child;

(c) Specific political initiatives and concrete legislative projects.

13. On the one hand, resolution E 156-NR XVIII.GP is a mandate by the legislature enjoining the Federal Government of Austria to initiate the respective amendments and to take the appropriate administrative measures; on the other hand, it constitutes a substantial programme of action for the Austrian Nationalrat itself to implement the Convention on the Rights of the Child.

14. The outlined course, pursued by the Federal Government and the Austrian Parliament, apparently is equivalent to the immediate application of the Convention, since the Federal Government as well as the Nationalrat committed themselves to the implementation of the aims set forth in the Convention in a comprehensive plan of action. This commitment to implement the rights of children and adolescents recognized in the Convention is the basis for setting up binding legal rules at the national level, offering children and adolescents maximum legal security.

15. Summing up the above-mentioned explanations, it may seem at first glance that the indirect application of the Convention's provisions on the rights of the child appear to be detrimental to the implementation of children's rights in Austria. On closer inspection, however, one can see that the concrete further development of the aims of the Convention through national legislation is a more effective way of establishing definite legal rights for children and

adolescents. Not least due to the fact that clear competencies are created by national legislation, enabling a child/adolescent seeking legal protection to assert his claims without having to apply to international bodies and especially due to the fact that children and young people are structurally at a disadvantage over adults on account of their age and resultant lack of knowledge about international legal actions and strategies.

16. The importance of the Convention for children and adolescents in Austria is safeguarded, not least, by the fact that young people seeking justice or legal protection can argue that Austrian law must not contradict either the text or the interpretation of the Convention, and therefore in case of doubt has to be applied in accordance with the objectives of the Convention.

D. Institutional measures for the implementation of the Convention

17. The provisions concerning children's rights can be found in a variety of federal and regional laws, including the corresponding regulations, the so-called "cross-sectional material". For this reason, official competencies are divided between the various federal ministries and the administration of the Länder. Since the establishment of the Federal Ministry of the Environment, Youth and the Family and Consumer Protection in 1984 (now known as the Federal Ministry of the Environment, Youth and the Family), the national children's policy has mainly been dealt with within the framework of policies on the family, youth welfare, justice and social welfare. As a result and in the course of intensive occupation with the implementation of the Convention on the Rights of the Child, a separate division for children's rights was set up on 1 January 1994 within the Federal Ministry of the Environment, Youth and the Family.

E. Comprehensive children's and adolescents' ombudsman system (art. 4)

18. Children do not have a lobby and are hardly in a position to represent their rights and interests themselves. Even parents, usually the first advocates of children, are often unable to handle this task on their own. The Austrian ombudsman systems for children and adolescents serve as contact points for all questions and problems concerning children and adolescents, and as an independent forum for representing and protecting their interests. The Convention on the Rights of the Child was an important stimulus and continues to be the basis for the self-definition, daily work and further development of these systems.

19. In Austria, the Youth Welfare Act (Jugendwohlfahrtsgesetz) of 1989 (Federal Law Gazette No. 1989/161) constitutes the legal basis for the establishment of ombudsman systems for children and adolescents in each of the nine Länder. Under Section 10 of the Act, it is the legal task of the ombudsman for children and adolescents:

(i) To counsel minors, persons legally responsible for a child and legal guardians in all matters relating to the position of the minor and the tasks of the person legally responsible for the child;

(ii) To assist in cases of disagreement and dispute about care and upbringing.

20. Besides providing counsel in individual cases, the ombudsman for children and adolescents may act as a mediator between the different institutions of youth welfare, the parent(s) or common law spouses, the school or the kindergarten on the one hand and children and adolescents on the other. The ombudsman may organize information events on issues of special importance to children and adolescents, evaluate and initiate legal provisions, regulations and other legal measures from the point of view of children and adolescents, make recommendations to improve the living conditions of children and young people, point out grievances and protect the interests of children and adolescents in all planning and research projects.

21. The legal competencies of the ombudsmen for children and adolescents differ from Land to Land: In Salzburg, the ombudsman may make, in the interests of minors and their families, representations to courts, administrative and other authorities, publicly represent youth welfare matters, promote the collaboration of youth welfare institutions with the respective branches of science and cooperate in the evaluation of pertinent bills and draft regulations. In all of the Länder, the ombudsmen for children and adolescents are exempted from accountability by an explicit constitutional provision, thus making them independent of the governments of the Länder.

22. In Lower Austria, Upper Austria, Vorarlberg, Carinthia and Salzburg, the ombudsmen for children and adolescents have a right to information. In Salzburg, the ombudsman must upon request be granted access to data, information and documents available at the regional and local levels. Only the ombudsmen of Vorarlberg and Salzburg have the right to inspect files. In addition, the ombudsman of Salzburg may demand to be summoned to hearings in administrative proceedings affecting children and young people. Moreover, the ombudsman of Salzburg may be party to administrative proceedings relating to the youth welfare system, to the day-care law of Salzburg, and to administrative proceedings involving buildings for children and adolescents, the establishment or expansion of private kindergartens and the establishment, operation or substantial modification of hospitals. The ombudsman of Lower Austria may be party to youth welfare proceedings and has the right to file complaints with the Administrative Court.

23. In Salzburg, moreover, the ombudsman for children and adolescents is entitled to recommend actions to administrative authorities which are in the interest of children and to submit proposals for improving children's and young people's overall living conditions and chances of development. This legal power obliges the authority concerned to either comply with the ombudsman's recommendations within a period of eight weeks or to explain in writing why they were not carried out.

1. Federal Children and Adolescents' Ombudsman

24. Under Federal constitutional law, the federal Youth Welfare Act of 1989 constitutes the legal basis for the ombudsman systems for children and adolescents in the Länder, but not for the federal ombudsman system. Not least due to the late establishment of children's and adolescents' ombudsman systems in some of the Länder, the office of the Federal Children's and Adolescents' Ombudsman was set up in the Federal Ministry of the Environment, Youth and the Family; the tasks of the Federal Ombudsman are:

To publicly represent the idea of non-violent education;

To publicly promote a child-friendly society;

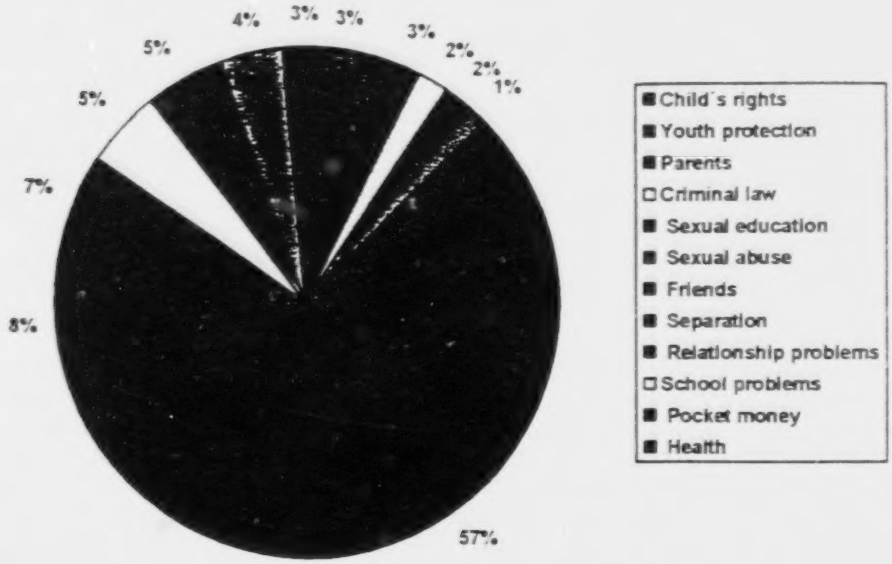
To collaborate with the ombudsman systems for children and adolescents in the Länder, as well as with public and private youth welfare institutions;

To be a contact point for suggestions and complaints of children and young people and/or their custodians regarding alleged violations of children's and young people's rights.

25. To help with this last task, the so-called "red telephone" hotline was created. It can be used to contact the Federal Ombudsman from all over Austria at the cost of a local call. The "red telephone", with the number 0660/6076, has become very well known in a very short period of time. This is mainly due to the public relations activities directed at specific groups and carried out by the ombudswoman for children and adolescents (interviews in the print media, radio and on television, lectures within the framework of advanced education schemes for families, at schools, commissions of inquiry and national and international conferences). In spite of the fact that independent ombudsman systems have since been established in all nine Länder, the national children's and adolescents' ombudsman is contacted more and more frequently not only by children and young people, but also by parents and even grandparents.

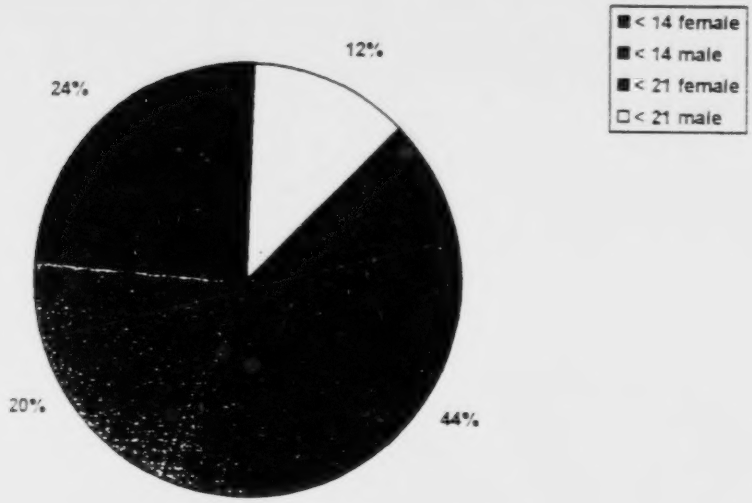
26. Since the Federal Government's ombudsman for children and adolescents was set up in February 1991, a total of 5,253 persons have contacted this service, about half of them adults.

Table 1. Child and youth concerns



27. Fifty-seven per cent of the questions shown in table 1 are concerned with children's rights. Children and adolescents in Austria are aware of their "rights" thanks to the publicity campaign on the rights of the child conducted by the Federal Ministry of the Environment, Youth and the Family in 1992. This campaign included television spots and programmes, the print media, advertisements and posters, but particularly a competition on this subject in which all Austrian schools were invited to participate. Questions regarding the child's rights were very often concerned with "classic" issues such as going out, leaving home, staying up late, going on a holiday alone, unfair grades and pocket money, which were recorded in earlier reports under the categories of youth protection, family law, children leaving home or school problems.

Table 2. Youth concerns according to gender



28. If the statistics are broken down by gender and age, one can see that girls below 14 make up the largest group of those seeking advice or assistance (44 per cent). It is also noticeable that the age of those seeking advice has generally risen; there were hardly any calls from children under 10. Most of the children seeking advice are between 12 and 13 years of age; 24 per cent of the callers are girls over 14; the share of boys under 14 is 20 per cent, and the share of boys over 14 is 12 per cent.

Table 3. Child and youth concerns

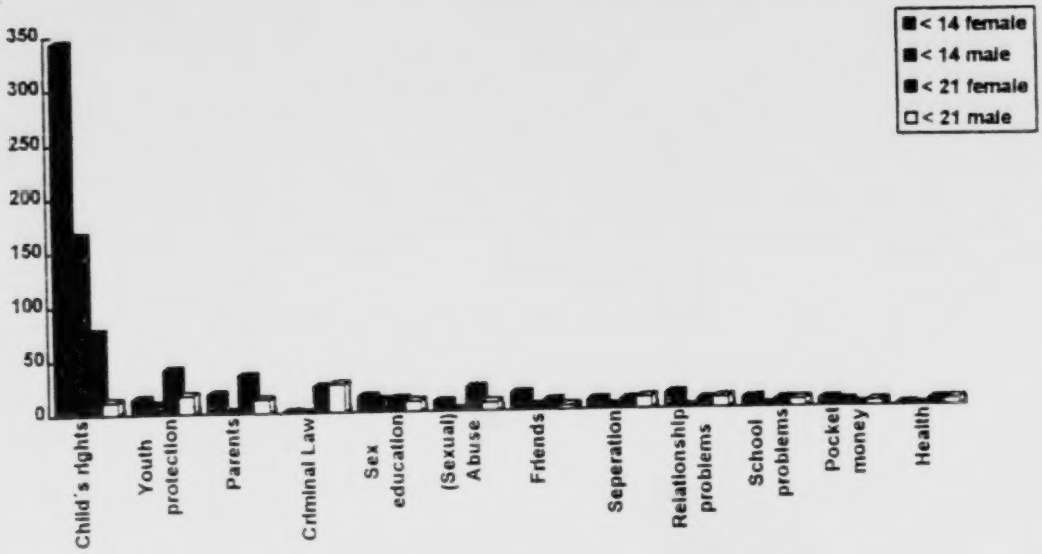
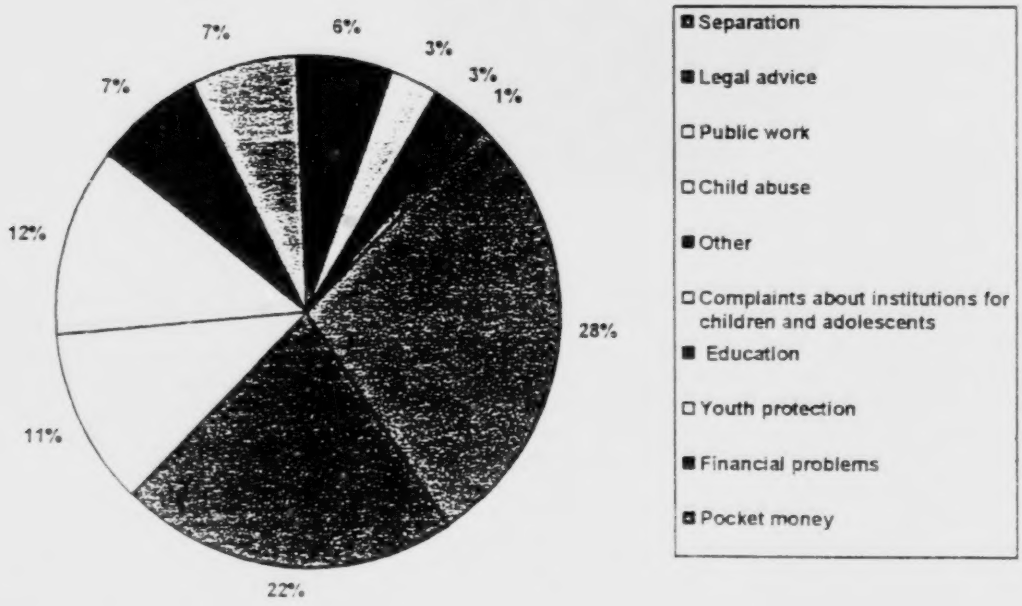


Table 4. Adults' concerns



Adults' concerns: methods and frequency of contact

29. The main adult concern is the issue of marital separation. Of the total of adults seeking advice, 28 per cent of the inquiries were made in connection with separation or divorce (e.g. maintenance payments, visiting rights or custody). The poster campaign conducted by the Federal Ministry for the Environment, Youth and the Family "Who do I belong to now?" aroused higher than average interest in men. Questions concerning adoption, consumer protection, youth loans, tenancy laws and inheritance laws were asked under the title "legal advice" (22 per cent), 12 per cent of inquiries referred to suspicions of sexual harassment or exploitation. Seven per cent of calls were concerned with complaints about youth service offices, 6 per cent with child rearing problems, 3 per cent with inquiries concerning youth protection. Three per cent of those calling had financial and/or housing problems. One per cent of questions dealt with pocket money.

Table 5. Adults' concerns according to gender

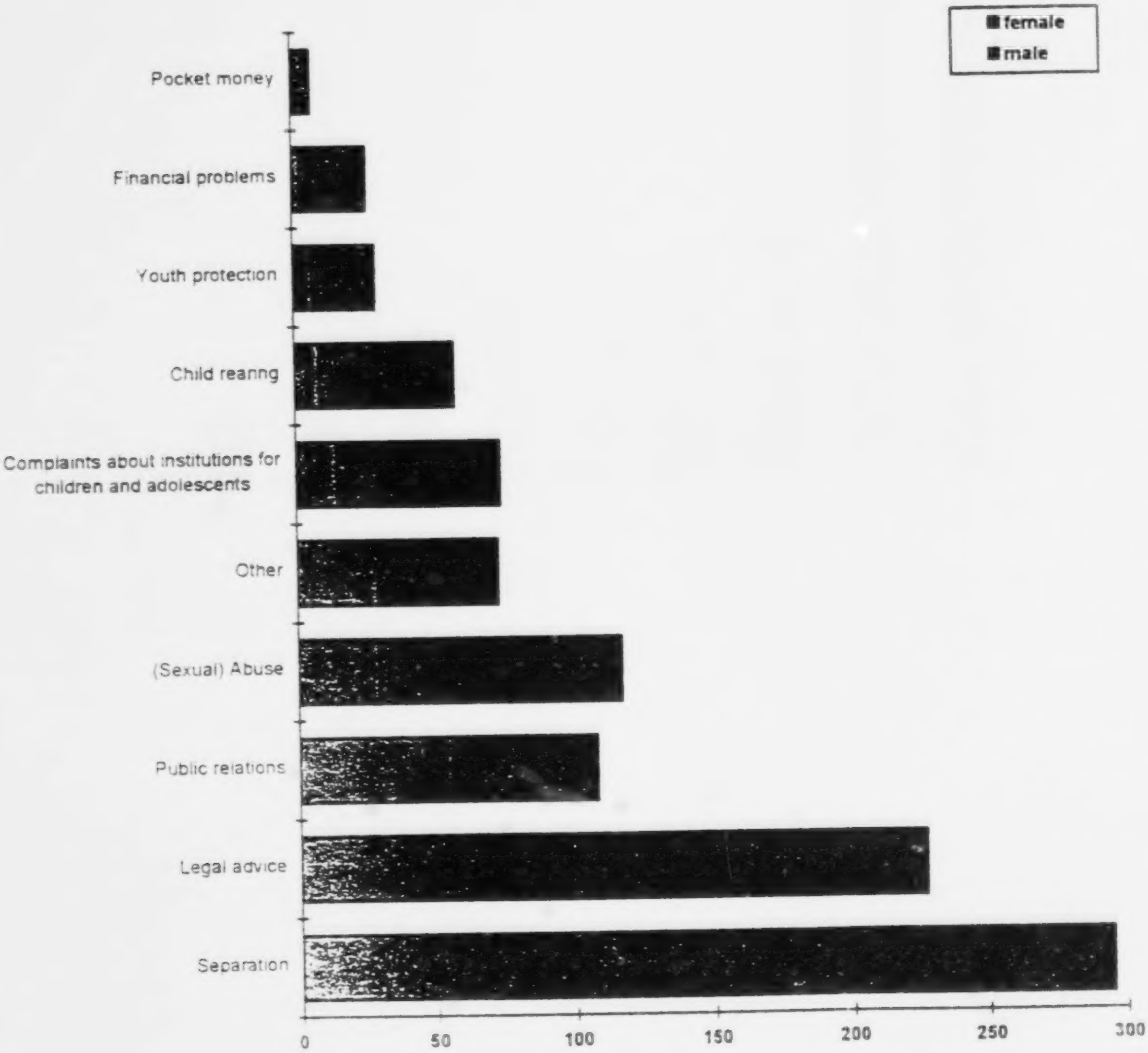
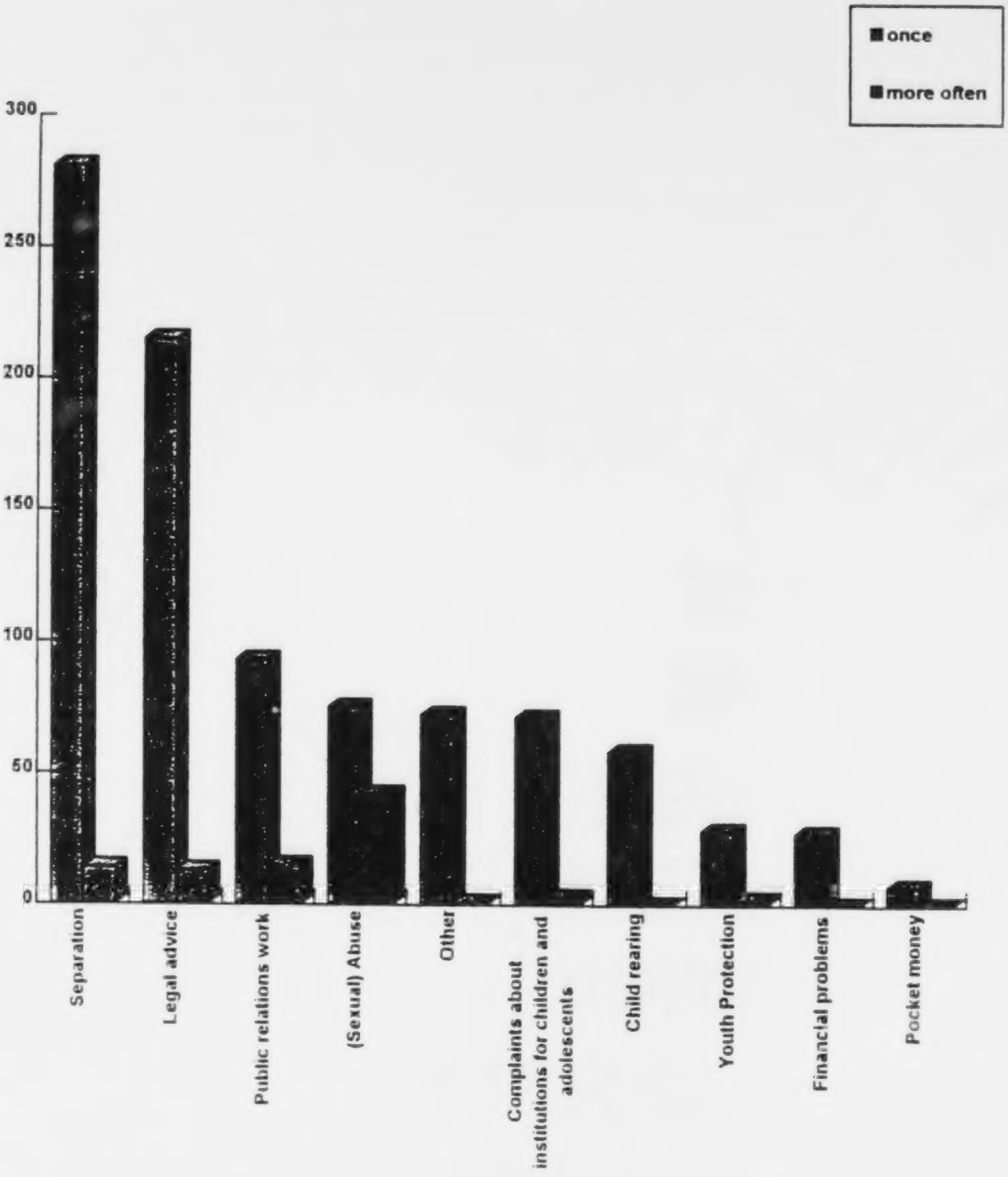
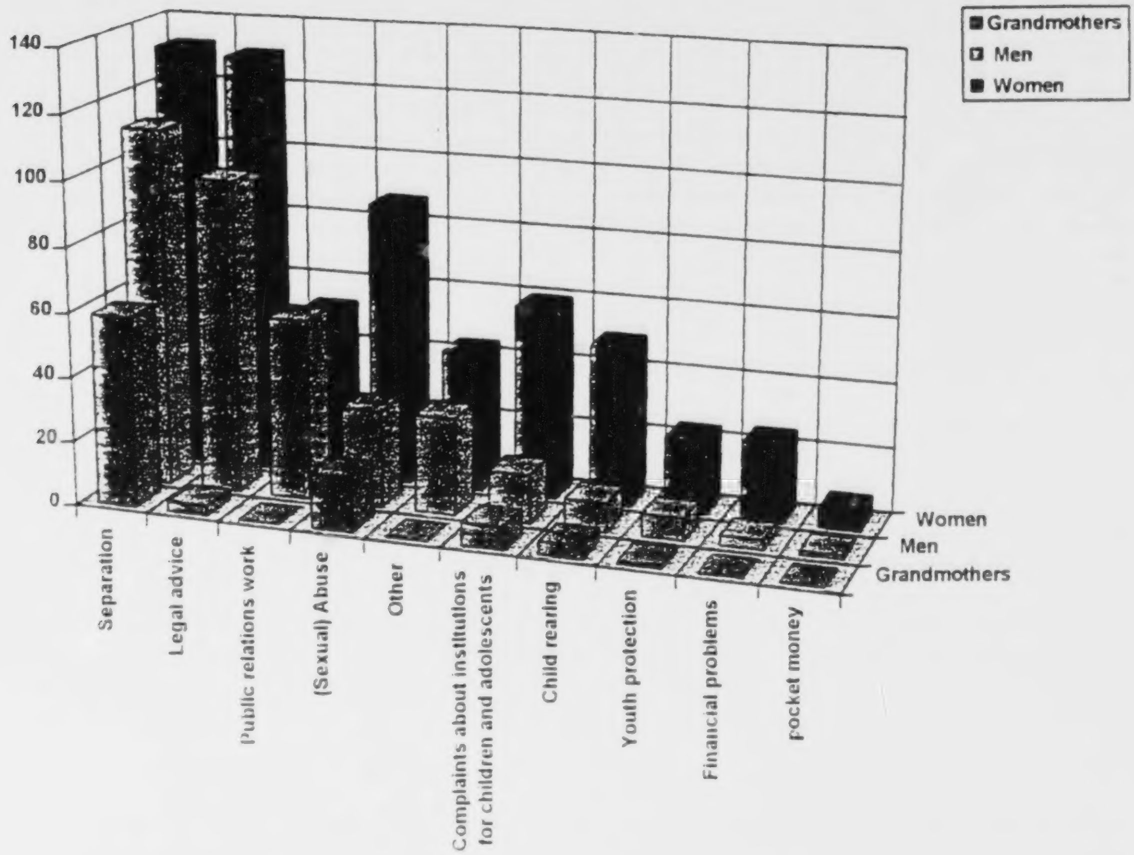


Table 6. Frequency of adult contacts



30. With reference to the frequency of calls (table 6), it must be remembered that repeated calls are made mainly if there is a suspicion of child abuse. This repetition is undoubtedly due to the gradual development of trust.

Table 7. Adults' concerns



Other focal points

31. Questions concerning youth protection laws came primarily from young girls and boys (8 per cent). It is mainly young girls who have difficulties with their parents, and this is very often linked to the question of children leaving home. Girls under 14 years of age often have typical problems with self-determination (clothes, hair styles, too little leisure time outside the home). The questions asked by boys, on the other hand, were concerned with the purchase of leisure items (high-tech items, mopeds, etc.) and the connected questions of their capability of entering into a contract. All in all, 7 per cent of questions involved this issue. Problems with friends or with boyfriends or girlfriends were reported by 3 per cent of both girls and boys.

32. Questions concerning criminal law were almost only asked by adolescents, girls frequently asking about (discovered or undiscovered) shoplifting, and boys being more likely to inquire about damage to property or bodily harm. Five per cent of questions were asked by boys and girls with equal frequency and by children in both the under 14 and over 14 age groups.

Some 4 per cent of calls fall into the category of "violence", i.e. sexual harassment/exploitation or ill-treatment. The fact that sexual violence was brought forward solely by girls (the vast majority in the 17/18 age group) shows that this is a typical female problem; on the other hand, reports of physical violence were made exclusively by boys and male adolescents.

33. Some 3 per cent of children and young people who called also said that they suffered because of conflicts between parents who were separating or separated, this problem being most frequently discussed by young boys. Most of the inquiries were concerned with the specific question of the extent to which the child or adolescent could make its own decision about moving from one parent to the other. School problems or questions about the "proper amount of pocket money" or health represented only a very small proportion of inquiries (2 per cent or 1 per cent each).

2. Standing Committee of Ombudsmen for Children and Adolescents

34. The Austrian ombudsmen have formed a Standing Committee of Ombudsmen for Children and Adolescents to exchange information and experience, to discuss matters of common interest and to coordinate activities going beyond the borders of their respective Länder. The Committee is chaired by the representative of a different Land each year and sees itself as a contact point for institutions and public relations at the federal level.

35. Since 1994, the Standing Committee of Ombudsmen for Children and Adolescents has published the quarterly Kids and Teens, which is distributed to experts in the fields of youth welfare, youth promotion, politics and the media.

3. Children's commissioners

36. Independent children's commissioners have been appointed in larger cities such as Linz and Graz. It is the Graz commissioner's task to fully protect the interests of children both in public and in individual cases in order to improve the appreciation of children by families and society and to enable them to lead a life without fear and distress. A special focus of the commissioner's work is the equality and integration of foreign, disabled and socially disadvantaged children.

37. When dealing with individual cases, the ombudsmen offer information on child-related issues and on points of law, counselling and mediation. Their activities range from one-off provision of information on the phone to recurring counselling, from gathering and submitting comments to mediation. The majority of the cases dealt with by ombudsmen concern questions of custody and visitation rights, upbringing, sexual exploitation, abuse/neglect, youngsters leaving their families, measures of youth welfare, etc.

38. The following principles apply to the ombudsman's case work: ombudsmen are to protect the interests of the child concerned; the problem is considered from the perspective of the child, each action is discussed with the persons concerned, interventions require the consent of those affected, all matters are treated confidentially, the wish to remain anonymous is respected and assistance is provided in an unbureaucratic way. Ombudsmen for children

and adolescents fulfil their task of being the general representatives of children's and young people's interests, above all through topic-related activities. The specific topics are derived from individual case work (frequently recurring problems such as custody/visitation rights or very typical questions, e.g. the right of children to be heard), from observations of the situation of children and young people in general and in certain spheres of life (living conditions of children and adolescents), from public discussions on certain topics, and from inquiries and proposals made by groups, organizations and institutions.

39. These child-oriented topics are dealt with by discussing them with experts and specialized institutions, in interdisciplinary working groups, by participating in commissions, by submitting comments to the responsible institutions and political bodies and by public relations. Public relations work makes the ombudsmen familiar figures, thus facilitating access for children and young people. It increases public awareness of topics concerning children and young people and, among other things, constitutes the driving force for the implementation of changes improving their situation. The experiences of ombudsmen for children and adolescents working at the federal level and in the Länder are presented to the public in (bi-)annual reports.

40. By establishing a total of 10 ombudsman systems for children and adolescents, at the federal level and in all of the Länder, and by appointing children's commissioners in Linz and Graz, Austria has created a comprehensive network. The ombudsmen consider the Convention on the Rights of the Child an integral part of their work and thus also contribute to the implementation and development of children's rights in Austria.

41. To further the realization of the aims of the Convention the Austrian Parliament, in resolution E 156-NR XVIII.GP of 14 July 1994 requested the Federal Government to prepare and submit a bill on the establishment of an independent ombudsman system for children and adolescents at the federal level. The mandate to expand further the ombudsman system for children and adolescents at the federal level, as well as at the level of the Länder, is to provide Austria with a structure specifically tailored to the needs of children and youth, making children's rights and above all the Convention on the Rights of the Child increasingly known to public and private institutions, adults and children in Austria, and ensuring their implementation and further development at all levels.

4. The Ombudsman Board

42. The Ombudsman Board, a constitutional body, frequently deals with the implementation and/or enforcement of the rights of children and adolescents (e.g. in the field of youth welfare). Such cases are contained both in the reports of the Board to the Nationalrat and in the reports to the regional parliaments (with the exception of Tyrol and Vorarlberg).

5. Hotlines for children and adolescents

43. In order to safeguard children's full access to their rights and to institutions promoting these rights, a network of hotlines was established

in each sector. The official telephone directory lists the most important hotlines for children under the heading "important phone numbers", so that children may call from any of the Länder; the caller is only required to pay local call rates for the children's numbers marked ** in the following list, the difference is borne by the hotline provider:

> Vienna's "children's phone";
>
> The "red telephone" of the federal ombudsman for children and adolescents;**
>
> "Children's phones" of the ombudsman for children and adolescents in each Land, as well as of the children's commissioners in the cities of Linz and Graz;
>
> "On-line counsel" service for children, offered by the Austrian Broadcasting Corporation;**
>
> Emergency number for raped women and girls;
>
> Emergency number of the centres for the protection of children;
>
> Crisis intervention centre in Innsbruck;
>
> Emergency telephones and crisis numbers in Vorarlberg, Salzburg, Tyrol, Upper Austria;
>
> School service of the Federal Ministry of Education;**
>
> Assistance in situations of crisis: "Befrienders" (in English);
>
> "Youth information" of the Federal Ministry of the Environment, Youth and the Family;**
>
> Family service of the Federal Ministry of the Environment, Youth and the Family;**
>
> Numbers of different institutions providing information for young people.

44. Experience has shown that lines specifically reserved for children in distress (e.g. lines for children in emergencies, worried or troubled children) are hardly used, while general counselling services for children (where children can tell counsellors about general concerns and worries as well as their everyday problems) show a disproportionately high degree of acceptance. Decisive factors for the acceptance of such services is knowledge of their existence (propagated by continuous public relations work), the handling of inquiries by the counsellors in a child-orientated way, availability at appropriate hours and low call rates. In order to ensure that these lines for children are staffed around the clock, several telephone numbers are being linked in a network.

F. Measures to increase awareness of the principles and provisions of the Convention among adults and children

45. The Federal Ministry of the Environment, Youth and the Family has used the Convention on the Rights of the Child to draw attention to the special situation and significance of this group of the population by introducing a number of measures to increase public awareness. By launching targeted and even legislative initiatives, the Ministry also contributed its share to increasing the protection of young people in Austria and to promoting their rights. These activities are based on the experience that age and development make children highly dependent on their environment and the persons surrounding them every day. Children are often confronted with problems that are difficult to solve, make excessive demands on them or affect them adversely. The problems of children and youngsters are intricate and cover a wide range: children's worries are not understood, their needs are not taken seriously, they are discriminated against by society, they lack room to move, they cannot fully develop their own personality as a child, they are exposed to the most extreme types of physical and mental cruelty.

1. Representative opinion poll on the awareness of children's rights

46. On 13 January 1992, an initiative taken by the Federal Ministry of the Environment, Youth and the Family to increase the awareness of children's rights was presented at a press conference. On that occasion, the results of a representative study (carried out by FeSSEL and GFK 1992) on knowledge of children's and young people's rights in general and contact and counselling services for children and young people in particular were announced: 86 per cent of those aged 14-17 were aware of the "right to compliance with the provisions on the protection of apprentices", 84 per cent knew about the "right to freely choose one's profession" and the "right to freedom of expression", 79 per cent were aware of the "right to non-interference with correspondence and the sanctity of diaries", 75 per cent knew about the right to "freely choose one's school", 74 per cent were aware of the right to "protection against physical violence and maltreatment" and of the right to "protection against sexual abuse", 70 per cent of young people knew that they may be heard in court and administrative proceedings, and two thirds were aware of the right to maintain regular contact with a parent not living with them. Among the contact and counselling services for children and young people, the Youth Welfare Office was known best (37 per cent), followed by "On-line counsel", a children's counselling service run by Austrian television (17 per cent), and the line for people with problems on the Austrian radio station Ö3 (11 per cent). In the third year of its existence, the ombudsman system for children and adolescents was already known to 38 per cent of the public.

2. Information brochures on the rights of the child

47. In 1992, the Federal Ministry of the Environment, Youth and the Family distributed an informative, illustrated handbook entitled "My perfect right" to all organizations dealing with children, young people and families, as well as to all pupils in grades 6 and 7 in Austrian schools. This gave rise to

heated debates about children's rights, not only among these pupils, but particularly among the adult generation. For its PR activities, the federal ombudsman for children and adolescents uses the sticker "Children have rights", and the regional ombudsmen have designed a series of postcards entitled "Children are right", the net proceeds from which are to go to the Austrian UNICEF Committee for child-aid programmes. In 1994, the two largest children's organizations, Katholische Jungschar and Die Kinderfreunde, published a child-policy calendar and a brochure entitled "Children have/are right(s)". In 1993/94 the Austrian scouts and guides started a child rights campaign with the title "All right!".

3. Special "children's rights" stamp

48. On the occasion of the ratification of the Convention, the Federal Ministry of the Environment, Youth and the Family, in collaboration with the Federal Ministry of Education and the Arts, a large insurance company and bank, and the major dailies in Austria, organized a competition in which Austrian children were asked to send in drawings on children's rights in general and on the following aspects in particular:

The right to live with both parents;

The right to education, leisure time and play;

The protection of children against physical, mental and sexual abuse;

The protection against child labour and traffic in children;

The right to protection against violence in the mass media;

Special protective measures for children of refugees and minorities, for orphans and disabled children.

49. The best of a total of 25,000 drawings were exhibited in the Austrian Parliament, and the drawing awarded the first prize by a panel of expert judges was used as a design for a special stamp, which was issued by the Austrian Postal Service on 16 April 1993. The winner of the first prize was invited to accompany the Federal Minister for Youth and the Family to the United Nations for the presentation of the stamp.

4. Media kit for schools

50. In collaboration with the Austrian Committee of UNICEF, the Federal Ministry of Education and the Arts compiled a media kit on the Convention. This kit was made available to all schools as a tool for classroom instruction. The comprehensive kit contains the text of the Convention in German, along with detailed explanations of individual provisions.

5. World Conference on Human Rights, Vienna 14-25 May 1996

51. The second World Conference on Human Rights was held in Vienna from 14 to 25 May 1993. Part I, paragraph 21 of the final document underlines a

child's basic right to protection by stating that the child for the full and harmonious development of his or her personality should grow up in a family environment, which accordingly merits broader protection.

52. On the occasion of the second World Conference on Human Rights, held in Vienna in 1993, a pupils' conference was organized by the Austrian Federal Association of Pupils in cooperation with the Federal Ministry of Education and Cultural Affairs and the Ludwig Boltzmann Human Rights Institute. Three working groups prepared three resolutions entitled "Civil and political rights", "The rights of children and adolescents" and "Indigenous peoples, people's right to self-determination, minorities, racism". In addition, a joint final resolution was passed by the plenary meeting after intensive discussions. The resolutions were aimed at the public, as well as at the World Conference on Human Rights, to which they were submitted via the Austrian Ministry of Foreign Affairs.

6. "Message from children"

53. On 5 March 1992, the Minister for Youth and the Family and the federal ombudsman for children and young people invited more than 250 children to a one-day boat trip on the River Danube to discuss children's rights with politicians, scientists and representatives of the media, the theme being "The big worries of the little ones are not the little worries of the big ones". On 12 May 1992, a historical exhibition on "Children in Vienna" at the Museum of Fine Arts provided the background for a discussion between children as experts on their own problems and needs and politicians, officials, teachers and scientists.

54. A delegation of the participating children conveyed the results of these two events - the demands, wishes and suggestions of the children - to the Austrian parliamentarians specialized in children's, youth and family affairs in a "Message from children" to Parliament on the day the Convention was approved (26 June 1992).

G. Dissemination of the Convention

1. The "Experts' report on the Convention on the Rights of the Child"

55. Family reports, which examine and describe the effects of legislative and administrative measures on families in Austria, have been compiled by independent scientific experts since 1969 at 10-year intervals; similarly, a "Report on the situation of Austrian Youth", "Youth report" for short, has been prepared regularly since 1988 in each legislative period. The ratification of the Convention on the Rights of the Child was the decisive factor which led to a "Children's report", drawn up for the first time in 1993, after the Austrian Parliament had demanded that the Austrian legal system for children and young people up to the age of 18, as well as their living situation, be examined with regard to their compatibility with the aims of the Convention. The Convention will furthermore induce the Austrian authorities to review periodically the legal and actual situation of children in Austria.

56. By commissioning the Institute of Sociology at the University of Linz to carry out a comprehensive sociological study (1992-1994) on "Life as a child in Austria", the Federal Ministry of the Environment, Youth and the Family took another major step in collecting data on children in Austria as a distinct social group. Some of the results of this study, in which 3,000 children participated, form the basis of this report. In a further commissioned study, entitled "Farewell to childhood? The world of 11-14-year-olds" (1994-1995), the Austrian Institute for Youth Research investigated the rapidly changing world of children and adolescents in this age group.

2. International United Nations meeting on "Children in detention"

57. At the invitation of Austria, the United Nations expert meeting "Children in detention: Application of human rights standards" was held in Vienna from 30 November to 4 December 1994. The results of this meeting were published under the title Children in Trouble. This publication contains the presentations and final report and recommendations on the use and application of international juvenile justice instruments. Two United Nations resolutions set out the mandate for the organization of this expert meeting on juvenile justice. One is resolution 1993/80 of the Commission on Human Rights, which proposed the convening of a meeting of experts under the auspices of the Centre for Human Rights, the Crime Prevention and Criminal Justice Branch of the United Nations and the United Nations Children's Fund (UNICEF) on the application of international standards concerning juveniles in detention. The second is General Assembly resolution 45/115 of 1990, which calls upon Member States to address the serious problem of the instrumental use of children in criminal activities by, *inter alia*, undertaking research on and systematic analysis of this phenomenon to establish its quantitative and qualitative character, with a view to delineating effective countermeasures. The Assembly further requested the Secretary-General to report on the implementation of this resolution to the Ninth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, which was held in Cairo, Egypt, from 29 April to 8 May 1995.

58. Based on the mandate of the Ninth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, the Government of Austria commissioned a study for the elaboration of a programme of action aimed at promoting the effective use and application of relevant United Nations human rights instruments and of United Nations standards and norms in juvenile justice, as well as promoting technical assistance in juvenile justice (Vienna, Ghent, 1996). Towards this end, the Government, together with the Crime Prevention and Criminal Justice Branch of the United Nations Office in Vienna, other parts of the United Nations system and non-governmental organizations, is committed to launching a step-by-step process encompassing, in particular, systematic needs assessment, the elaboration of substantive priorities, and systematic evaluation and follow-up criteria aimed at introducing, enhancing and ensuring the effective development of national systems of juvenile justice. Thus, a functioning juvenile justice system in all its elements should be part of ensuring the rule of law as an indispensable element of democracy and development.

59. The process should also provide a practical contribution to the effective implementation of the Convention on the Rights of the Child and the plan of action of the United Nations High Commissioner for Human Rights in this regard.

3. Seminars on children's rights

60. Jointly organized by the Federal Ministry of the Environment, Youth and the Family, the Federal Ministry of Education and the Arts, and the European Centre for Social Welfare Policy and Research, a meeting on children, children's rights and childhood policies was held in Vienna from 2 to 4 May 1994. In a side activity, the public was informed about an international research project "Childhood as a social phenomenon", coordinated by the research centre mentioned above. Within the framework of its childhood research programme, the European Centre conducted studies concerning the "Time and space" of children in Austria compared to other European States, the results of which will be available in 1997.

61. The European Centre for Social Welfare Policy and Research organized an international seminar on "Children in a period of transition: Childhood research and policies in Central and Eastern Europe" in Vienna in November 1994.

62. The Austrian population has been familiarized with the Convention through various events arranged by and for children, for example the yearly Children's Summit, and a series of activities organized by the ombudsmen for children and adolescents, providing information on children's rights (for example, at the Vienna International School).

63. All these activities aimed at the dissemination of information about the Convention have been made possible by public contracts, subsidies to children's and youth organizations, or through project financing.

4. Measures to make children's rights documents available to the public

64. The "Experts' report on the Convention on the Rights of the Child", requested by the Austrian Parliament was made available to all federal ministries, Land governments, universities and colleges, libraries, official and private organizations and NGOs working in the field of children's rights and to every private person interested in the issue. It is intended to follow the same procedure in the case of the initial report of Austria to the Committee on the Rights of the Child.

III. DEFINITION OF THE CHILD

A. Age of majority

65. In Austria, the decisive time for the legal status of the child is its nineteenth birthday. Up until that time, the minor does not, in principle, have full legal capacity. In individual cases, minority may be shortened by judicial decision if the minor has reached his eighteenth birthday and appears mature enough to look after his affairs independently and properly

(Allgemeines Bürgerliches Gesetzbuch (Austrian General Civil Code) sect. 174, para. 1). It may also be extended by the court, however, if the minor is not capable, especially as a result of perceptible retardation, of looking after his affairs without putting himself at risk (General Civil Code, sect. 173, para. 1).

66. If a minor marries, he or she achieves majority upon marriage, but not before the eighteenth birthday. Before the eighteenth birthday, such a minor is regarded as equal to a person of full legal age as regards his or her personal circumstances (but not as regards financial matters) (General Civl Code, sect. 175, paras. 1 and 2).

B. Schooling and education

67. General compulsory schooling commences on 1 September following a child's sixth birthday and lasts for nine school years. Children who have not yet attained compulsory school age must be admitted, at the request of their parents or persons responsible for their education, to first grade at the beginning of a school year if they reach the age of six by the end of the current calendar year and are "mature enough for school". If, on the other hand, a child subject to compulsory schooling is not yet "mature enough for school", it may be kept from attending school and attend preparatory school instead.

C. Legal age of sexual consent

68. The sexual self-determination of young girls and boys is protected by several legal prohibitions. The legal right of sexual self-determination - known as the "age of consent" for boys and girls - is set at 14 years. Intercourse and any other form of sexual activity with or in the presence of a minor are as liable to prosecution as the misuse of care positions (parents, teachers, educators, officials) for sexual purposes or the "moral endangering of persons under 16" (sects. 206-208, 212 of the Strafgesetzbuch (Penal Code)) or, finally, "homosexual acts with persons under 18" (sect. 209, Penal Code).

D. Legal age of marriage

69. Special rules apply to the right to marry. A man attains the legal age of consent for marriage on his nineteenth birthday and a woman on her sixteenth birthday. In individual cases, the court may declare, on application, that a man who has reached the age of 18 and a woman who has reached the age of 15 are of legal age for a particular marriage, provided they appear ready for marriage (sect. 1 of the Ehegesetz (Marriage Act)). Irrespective of the legal age of consent to marry, a minor requires the permission of his legal guardian and the person with care and legal responsibility. This permission may be granted by the court if no justified reasons exist for a refusal (Marriage Act, sect. 3).

E. Medical questions

70. Apart from section 8, paragraph 3 of the Krankenanstaltengesetz (Hospitals Act), the question of the permission or approval of minors to

receive medical treatment is not subject to regulation. The conclusion can be drawn from various legal provisions that the medical treatment of a minor, for example, who is aged 14 or older, is permitted only with the approval of the minor (and the consent of his legal guardian). Should the views of the minor and legal guardian differ in individual cases, it is conceivable that recourse will be had to the court of guardianship. (For further information, see chap. II, section C below.)

F. The child's right to progressive self-determination

71. The right to self-determination of a child/adolescent as regards his habitual residence is not dependent on rigid age limits, but on whether and to what extent it is (still) necessary for his care and upbringing (General Civil Code, sect. 146 b).

G. Self-determination as regards the capacity to perform legal acts

72. The extent of self-determination as regards the capacity to act is age-dependent. In certain conditions, children and minors who are (not) of age may perform occasional legal acts independently and with legal effect, without prior or subsequent parental approval. Such "partial majorities", differentiated according to age, are regulated by section 151, paragraphs 2 and 3, and by section 152 of the General Civil Code. Children who have not yet attained the age of seven have no capacity to act. Minors over seven years of age are capable of acting to the extent that they can effectively perform a legal act exclusively serving their advantage (General Civil Code, sect. 865). From the fourteenth birthday onward, known as majority, a minor may dispose of and assume obligations in respect of objects put at his disposal and in respect of income accruing to him from gainful activity to the extent that this does not put the satisfaction of his standard of living at risk (General Civil Code, sect. 151, para. 2).

73. Irrespective of the age of the child, so-called "pocket-money transactions" (that are normally conducted by a minor of that age and which relate to a trivial matter of daily life) become legally effective retroactively when the commitments concerning the child are fulfilled (General Civil Code, sect. 151, para. 3).

74. Minors who are of age (i.e. between 14 and 19 years) may on their own account enter into contractual obligations to provide services. This does not include services based on an apprenticeship or other training contract (General Civil Code, sect. 152). The conclusion of an apprenticeship contract requires the approval of the legal guardian, and the legal guardian may prematurely terminate the contractual relationship for important reasons.

75. On attaining the age of 14, a child also becomes liable for acts under civil law (General Civil Code, sect. 153), i.e. the child is considered liable for damages under the pertinent provision of the law.

76. Minors who are not of age (who have not yet reached the age of 14) lack the capacity of making a will. Until the age of 18, minors who are of age can

make a will only verbally before a court or a notary public. From their eighteenth birthday onward, minors have unrestricted freedom to dispose of their property by will (General Civil Code, sect. 569).

H. The child's right to be heard in court

77. No explicit provisions exist for the appearance of minors before a court. In cases before the court of guardianship that concern personal circumstances, case law grants party rights to minors who are of age. In the case of court decisions that affect the care and upbringing of the child (for example, in cases of the divorce or separation of parents), provision is made in section 178 b of the General Civil Code for "Taking the child's opinion into account": The court shall, "if at all possible", grant the child a personal hearing before such decisions are made. A child under 10 should be interviewed by a child psychologist from the Youth Welfare Office or in some other suitable way.

I. The obligation to give evidence

78. Austrian law on civil procedure is flexible as regards the examination of children as witnesses, to the extent that persons who are incapable of communicating their perceptions or were, at the time to which their statement refers, incapable of perceiving the relevant circumstance shall not be examined as witnesses (sect. 320, No. 1 of the Zivilprozeßordnung (Code of Civil Procedure)). Children may be examined as witnesses in both civil and criminal proceedings as soon as they are individually capable of giving evidence. No age limit is established.

J. The child's right to vote

79. The right to vote in elections to the Nationalrat and to the parliaments of the Länder is not obtained until the eighteenth birthday. Children within the meaning of the Convention are therefore excluded from voting in elections to the institutions of representative democracy. However, children and adolescents have an indirect effect on the composition of the Austrian Parliament to the extent that the Nationalrat election regulations allocate seats according to population figures (which include children and adolescents) and not the number of those entitled to vote.

80. Irrespective of their citizenship, pupils have the statutory right to vote in elections for their class speaker from grade 5 onward and their school speaker from grade 9 onward. The school speakers, who are members of the Joint School Committee, equal in numbers and rights to parents and teachers, have an important say in decisions on school matters, above all as regards school autonomy. In addition, there is a statutory body representing the interests of pupils at the Land and federal levels, whose members are elected by all Austrian school speakers.

K. Paid work

81. While the term "child" as used in the Convention on the Rights of the Child has extensive significance and in principle includes every person who has not yet reached the age of 18, a distinction is made between "children"

and "adolescents" in the provisions of employment protection law, principally in the Kinder- und Jugendlichenbeschäftigungsgesetz (Children's and Adolescents' Employment Act) and the Landarbeitsgesetz (Agricultural Employment Act). Minors who have either not finished compulsory schooling or who are not subject to compulsory schooling or have been exempted therefrom are regarded as "children" until 1 July of the calendar year in which they reach the age of 15. From that time on until their eighteenth birthday or until termination of any apprenticeship or other training arrangement lasting at least one year, but not after the date of their nineteenth birthday, they are deemed to be adolescents.

L. Driving licence

82. Children up to the age of 12 may only cycle when accompanied by adults. If they have passed their cycling test and are therefore in possession of a cycle permit, children over 10 may also cycle alone. Motorcycles (motor-assisted bicycles, scooters and mopeds) may be driven from the age of 16 without a test. Adolescents over the age of 16 may, after passing a test, also get a licence for light motorcycles. A licence (i.e. graded driving licence) for motor cycles and cars may not be acquired until the age of 18 and requires a driving test.

M. Passports

83. The parents or person legally responsible for the child may have a passport issued for the child. However, children may also be included on the identity card or passport of the parents or person who is responsible for the care and upbringing of the child, but only until the age of 12. A child of 14 may - with the approval of his legal representative - also apply for a passport. If there are indications that an adolescent intends to go abroad, and if this would jeopardize his well-being, the issuing of a passport will depend on the authorization of the court of guardianship. The same applies if the person legally responsible for the child opposes the application.

N. Age of criminal liability

84. With regard to criminal liability, the Jugendgerichtsgesetz 1988 (Juvenile Courts Act), Federal Law Gazette No. 599, distinguishes between "under-age persons", i.e. persons who have not yet attained the age of 14, and "adolescents", i.e. persons who have attained the age of 14, but are not yet 19 years old. Under-age persons who commit a punishable offence are "incapable of crime", i.e. they are not liable to prosecution (sect. 4, para. 1). If necessary, the youth welfare service will take action. The same applies to adolescents who commit criminal offences, on the following conditions:

> If, for particular reasons, they are not yet mature enough to realize that the deed was wrong or to come to this realization;
>
> In certain circumstances if they commit a misdemeanour (a criminal offence of less severity) before they are 16;
>
> Generally, if the offence is of a minor nature (in this event, adults are not prosecuted either).

O. Youth protection; sale of restricted goods; consumption of pornographic and violent films

85. The sale of spirits to young persons is prohibited under the Trade Regulation Act. Youth protection laws prohibit youngsters below 14 from smoking and drinking alcohol in general and those below 16 from smoking and alcohol consumption in public. In the case of spirits, there are higher age limits. Correspondingly, the sale of alcohol to young persons in public houses, inns or bars is forbidden. These statutory regulations have to be openly displayed in inns, bars and other hostelries. Consumption of illegal drugs is completely prohibited for all age groups, primarily by the Narcotics Law and by the Youth Protection Law.

86. The individual Youth Protection Laws in the nine Austrian Länder contain a series of additional specific protective measures for children and young people. Children below 14 years should not stay in public places between 9/10 p.m. and 5/6 a.m. unnecessarily or unaccompanied by a responsible adult, young people over the age of 14 may not do so between midnight and 5 a.m. There are additional restrictions on children and young people entering public houses unless they are there for the purpose of having a meal, taking part in family celebrations or passing necessary waiting time; young people under the age of 18 are generally prohibited from entering bars or nightclubs.

87. Children under six years of age may only visit puppet theatres or other theatre performances and films suitable for this age group in the company of another person. Children may visit cinemas alone only up to certain evening hours. Children under 14 years may visit children's balls or dance schools without a responsible adult; however, discos may only be visited by children over 14 years of age and this only until midnight at the latest; they are permitted to stay out longer if accompanied by a responsible adult or for school balls or similar functions.

88. The Jugendfilmkommissionen (Youth Film Commissions) or the Film Advisory Councils in the Länder are responsible for deciding whether a film is suitable for children, and in principle a film performance or other public event (e.g. music concert, sport event) may only be visited after midnight by adolescents in the company of a responsible adult. Individual youth protection laws forbid children under the age of 14, or sometimes even below 16, from visiting boxing or wrestling events or "events likely to brutalize young people". Similarly, the youth protection laws in the Länder forbid children and adolescents from entering gambling halls, participating in games of chance, using gambling machines (one-arm bandits) or aggression-stimulating arcade games.

89. In this connection it is remarkable that out of concern for young people, two of the Austrian Länder forbid young people below the age of 16 from hitch-hiking; most youth protection laws only allow children below the age of 14 to spend the night on a camping site or in a youth hostel if they are accompanied by a responsible adult; young people above 14 may do so within the framework of excursions, travel or under circumstances connected with work.

90. Owing to the huge demand, the Federal Ministry of the Environment, Youth and the Family publishes the brochure "Youth protection in Austria" each year. This brochure provides a survey of all youth protection laws and youth centres and youth clubs. In addition, the Federal Ministry of the Environment, Youth and the Family has commissioned a joint study with all nine Länder on the possible harmonization of various age limits relevant to youth protection contained in various laws, especially the Youth Protection Laws.

91. Youth protection provisions are also to be found in the Pornographiegesetz (1950) (Pornography Act), according to which pornographic products that have a damaging effect on the development of adolescents in health or moral terms must not be sold, leased or otherwise made accessible to children under the age of 16. The intention is to protect children under the age of 16 from insistent forms of pornography that could have a lasting effect in jeopardizing their sexual development. Proprietors of sex shops, video stores, newsagents and similar businesses are therefore prohibited from displaying pornographic representations of the type indicated in a way that is perceptible to adolescents or otherwise to make them accessible.

92. (Most of) the youth protection legislation of the Länder forbids, with the sanction of fines, the sale, leasing or passing on to children and adolescents in any other way of sexual representations that are hazardous to children and adolescents. The Tyrolean Youth Protection Act of 1993 also provides measures for restricting access by adolescents to so-called "telephone sex offers". In the case of repeated, serious infringements of the Pornographiegesetz (Pornography Act) and the youth protection provisions contained therein or in the youth protection laws, a business proprietor may have his trading licence withdrawn (Gewerbeordnungsnovelle 1992 (Trade Regulations Amendment); Federal Law Gazette No. 194/1993).

93. Both children and adolescents are prohibited from entering premises used for the purpose of prostitution; in addition, it is an offence punishable by the administrative authorities to provide children with premises for the purpose of prostitution.

P. Compulsory and voluntary military service

94. Every Austrian male is liable for military service from the age of 17. However, a man can basically not be called up for military service until he turns 18, and only then if he is fit for service. Voluntary military service may, however, also be performed early, at the age of 17. (For further details, see chap. IX, sect. A.2, below).

IV. GENERAL PRINCIPLES

A. Ban on discrimination (art. 2)

95. In the Austrian Federal Constitution, the general ban on discrimination is anchored by the provision on equality, which appears in several places, primarily in article 7: "All federal nationals are equal before the law. Privileges based upon birth, sex, estate, class or religion are excluded". In the entire Austrian legal system, there is no provision by means of which the rights granted under the Convention can be withheld from a child on the basis

of particular characteristics or activities of its parents or guardian relating, for example, to political views, skin colour or similar aspects.

96. The efforts made over many years to eliminate discrimination against illegitimate children have now come to fruition in Austria. Illegitimate children are now treated in the same way as legitimate children in all significant matters in family and inheritance law. Children born illegitimate and their parents are deemed to be a "family" just as much as married parents with their children, and illegitimate children have the same right to maintenance from their parents as legitimate children.

97. Austria is one of those countries with a relatively high number of illegitimate births: in 1992, 25 per cent of all children and 39 per cent of all first-born children were born illegitimate (1994 - Carinthia: 39.5 per cent, Styria 37 per cent, Salzburg 30.9 per cent, Tyrol 30.0 per cent, Upper Austria 27.4 per cent, Vienna 23.7 per cent, Vorarlberg 18.4 per cent, Lower Austria 17.3 per cent, Burgenland 16.2 per cent). The parents of one child in two born illegitimate marry at a later date, which is why, through the operation of the law, children who were originally illegitimate are regarded retrospectively as legitimate (legitimization).

98. The Kindschaftsrecht-Änderungsgesetz (Parent(s) and Child Amendment Act), Federal Law Gazette No. 162/1989, can be described as a milestone in the establishment of complete equality between illegitimate and legitimate children. It eliminated the last provisions that discriminated against the child or its parents. The only way in which an illegitimate child differs from a legitimate one is that, under section 166 of the General Civil Code, the custody of the illegitimate child is granted solely to the mother (not to the unmarried father in addition, nor as under previous legislation, to the Youth Welfare Office). However, joint custody may, on application, be transferred to the parents of an illegitimate child who are living under the same roof, provided this arrangement is not in conflict with the well-being of the child (General Civil Code, sect. 167).

99. The Erbrechtsänderungsgesetz 1989 (Right of Inheritance Amendment Act), Federal Law Gazette No. 656, represented the completion of the programme to place illegitimate children on an equal footing. This reform measure eliminated the prejudicial treatment of illegitimate children in statutory rights of inheritance as from 1 January 1991. Individual provisions discriminating against illegitimate children were abolished as part of a reform of the law relating to inheritance of farms and forestland.

100. The principle of non-discrimination in the Jugendwohlfahrtsgesetz 1989 (Youth Welfare Act) indicates its wide range of application. The youth welfare agencies are obliged by law (sect. 3) to grant assistance to Austrian and non-Austrian children - if they live in Austria (even if only on a visit) - in the same way (in 1993, a total of 26,635 minors were looked after by the youth welfare authorities, of whom 2,522 were foreign minors). Help must not be refused either to an Austrian or a stateless minor, even if he/she temporarily lives abroad.

101. In the Austrian schooling and training system, girls and boys have equal access to school education and vocational training. In order to eliminate, as

far as possible, any social discrimination against certain children, many special measures or support programmes have been developed for the children of economically disadvantaged parents, children whose mother tongue is not German, and disabled children, with the aim of balancing out the disadvantageous starting situation of this group. Various statutory measures (anti-discrimination and equality of treatment legislation) and special programmes to support women are increasing the equality of opportunities and of treatment for girls in their working life.

B. The best interests of the child (art. 3)

102. The importance of the "well-being of the child" on the social scale of values is reflected in the way the child-relevant laws are regarded. A main pillar of Austrian family law is section 178 a of the General Civil Code "Taking account of the well-being of the child" - the central standard for evaluating the child's well-being as the highest maxim and the basis for fashioning child-relevant legislation: "In assessing the well-being of a child, appropriate account shall be taken of the child's character and his needs, especially his predisposition, skills, likes and dislikes and his opportunities for development as well as his parents' living standard".

103. Pursuant to section 137, paragraph 1 of the General Civil Code, promotion of the well-being of the child is a general aim of upbringing: "Parents shall take care of the upbringing of their children while minors, and shall promote their well-being in general". Furthermore, the well-being of the child has to be taken into account by express statutory directive in a large number of cases: for example, in the undertaking by a married couple to live their lives in partnership (General Civil Code, sect. 91), the court decision on the legality of a change of domicile or the taking of a separate residence by married couples (sect. 92, para. 3), the decision as to which partner will be granted custody of the child if the parents are prevented from exercising custody (sect. 145, para. 1), the settling of differing views as to the child's education (sect. 147), the arrangements for visitation rights (sect. 148, para. 1), the undertaking of the legal guardian to determine paternity (sect. 163 a, para. 1), the decision regarding withdrawal or restriction of custody (sect. 176, para. 1), the decision regarding allocation of custody following separation or divorce of the parents (sect. 177, para. 1), regard for the views of the parent without custody (sect. 178, para. 1) or the approval of an adoption agreement (sect. 180, para. 1).

104. The well-being of the child is also the decisive guiding principle for the courts in guardianship proceedings in general. A violation of this principle usually leads to the reversal of court decisions by the courts of appeal or the Supreme Court of Justice. Finally, the principle of the well-being of the child can be applied in attempts to deal with and evaluate matters of family law, not just from the point of view of the parents, but also, more importantly, from that of the child.

105. The termination of living conditions that are detrimental to the child and the restoration of a living situation compatible with the well-being of the child are the general task and the express aim of the Youth Welfare Act of 1989. If and when the persons legally responsible for the child do not

guarantee the well-being of the minor, public youth welfare services shall be granted to the child (sect. 2, para. 2). If the family does not (adequately) fulfil its obligations to protect and bring up the child, the responsible persons from the Youth Welfare Office are to make up for the loss of individual or all the functions of the family. In cases of violence against children, the Youth Welfare Office is obliged in all cases to intervene and to implement a ban on violence. Counselling centres and social services are intended to assist children and their parents with moral and practical support in the case of difficulties or family conflicts, and the ombudsmen for children and young people mediate between parents and children in the case of differences of opinion or disputes.

106. The safeguarding and protection of the well-being of the child are implicitly the basic motivation for defining a series of specific criminal offences in such a way as to protect the legal interests of children and adolescents. In principle, their intentions are preventive in nature, namely the general outlawing of behaviour that is damaging to children's well-being, combined with the threat of punishment if these provisions are ignored.

107. For certain offences, the idea of the well-being of the child may, conversely, mean immunity from prosecution: for example, the eugenic and the under-age indications of section 97, paragraph 1 No. 2, cases 2 and 3 of the Penal Code lead to immunity from prosecution in cases of abortion: the eugenic indication makes abortion non-prosecutable if, objectively, there is a serious risk of possible severe physical or mental damage to the child. The "under-age indication" is also based on the idea that the future well-being of the child cannot be ensured: an under-age girl who is pregnant will often conceal her condition out of ignorance, shame or fear, and will allow the three-month limit to pass (Penal Code, sect. 97, para. 1 (1)). The under-age indication takes account of the fact that an under-age girl is not yet suited for motherhood with regard to its moral and social aspects and indicates that the lack of the future well-being of the child played a large role in the decision by the legislature to grant immunity from prosecution for the termination of a pregnancy in the case of an under-age, i.e. under 14-year-old, pregnant girl.

108. However, it must be noted that immunity from prosecution following termination of pregnancy both in the case of the eugenic indication and in the case of the under-age indication is not due to the fact that a child born in such circumstances is denied the right to life by society, but is rather based on the idea of the (un)reasonableness for the pregnant girl of giving birth to a child in such circumstances (in a conflict situation) under penal sanction.

109. Since the well-being of the child requires particular consideration when questioning an under-age victim in court, the 1993 amendment to the Strafprozeßordnung (Code of Criminal Procedure) introduced a decisive improvement in the position of the child in criminal proceedings: (new) section 162 a of the Code of Criminal Procedure, for example, introduced the hearing of under-age victims as witnesses by video technology, without the direct participation of the defendant and with an expert called in: the examining judge may entrust the questioning of a witness under the age of 14 to an expert, such as a psychologist, psychotherapist or psychiatrist, and the under-age victim is also given the opportunity to be heard in a separate room,

in which the counsel for the defence and the defendant are not present; they may pose their questions only indirectly - the examination is transmitted and recorded by video. The video recording serves as evidence in the trial, so the child needs to speak only once - in the preliminary proceedings - as a result of which the psychological burden on under-age victims under examination is kept as light as possible.

110. In order to safeguard the best interests of a child, the criminal courts must inform the guardianship courts of any convictions of persons entitled to hold parental rights or the appointed guardian of a minor, if it is to be assumed that the conviction could lead to an order by the guardianship authorities, in particular a decision to withdraw custody of the child.

C. The right to life, survival and development

111. The legally protected rights to life and physical integrity of children are as important as those of adults. These rights are protected by several statutory provisions. In particular, it is the task of the public youth welfare authorities (Youth Welfare Act 1989, sect. 1, para. 1, (1) and (2)) "to make provision for taking care of mothers, mothers-to-be and their unborn children, as well as infants and their parents (Maternity and Infant Welfare)" and "to promote the development of minors by offering assistance in care and upbringing, and to safeguard it with upbringing measures (Youth Welfare)".

Summary of maternity and infant welfare provision (1993)

Type of service	Events and consultations	Participants
Pregnancy counselling	1 376	14 439
Ante-natal preparation	2 302	24 828
Ante-natal exercise classes	3 975	14 891
Counselling of mothers and parents	23 819	399 113
Infant care courses	140	2 697
Social services at obstetrics clinics	641	22 449
Care and nutritional counselling	10 337 (house visits)	67 768
Child rearing advice	67 582	39 941 boys + 27 641 girls
Group activities	1 876	57 246
Others	1 539	10 648

112. The absolute right to life is, however, infringed by the so-called "abortion limit" - the immunity from prosecution for termination of pregnancy under certain conditions: in Austria, a termination of pregnancy is, in principle, liable to prosecution (Penal Code, sect. 96), unless one of the following conditions prevails:

> If the termination of pregnancy is carried out by a doctor within the first three months of pregnancy, following medical advice;
>
> If the termination of pregnancy is necessary in order to avert a serious risk that cannot be averted otherwise to the life, or serious damage to

the physical or mental health, of the pregnant woman, or if there is a grave risk that the child will be seriously handicapped mentally or physically, or the pregnant woman was under age at the time of conception, and the termination is performed by a doctor in each case;

If the termination of pregnancy is performed where medical assistance cannot be obtained in time in order to rescue the pregnant woman from a direct risk to her life that cannot be averted otherwise, (Penal Code, sect. 97).

113. The penal provisions contained in sections 96 to 98 directed against termination of pregnancy are based on the following principles:

Maintaining the principle that human life is to be protected by the means available under criminal law not only after birth (Penal Code, sect. 96);

Recognition of the right of the woman in a conflict situation to decide to terminate her pregnancy within the first three months of pregnancy after consultation with a doctor (Penal Code, sect. 97, para. 1.1);

The exemption from punishment of a termination of pregnancy if there are medical, eugenic, or under-age indications not tied to a time limit (Penal Code, sect. 97, para. 1.2);

Termination of pregnancy may only be carried out by a doctor, unless there is danger to the life of the pregnant woman and medical assistance cannot be obtained in due time (Penal Code, sect. 97, para. 1.3).

114. In the preparatory deliberations on this law, it was stressed that termination of pregnancy was not to be regarded either as a socially desirable or a medically recommended method of birth control, but that, conversely, penal law does not represent an effective remedy for preventing termination of pregnancy. Rather, setting up counselling centres, providing information to prevent unwanted pregnancies, and eliminating situations of need and distress that could make the child an overwhelming problem, represent more effective measures for preventing terminations of pregnancy than the threat of penalties. This led to the adoption of the Familienberatungsförderungsgesetz (Family Counselling Promotion Act) (Federal Law Gazette No. 1974/80).

115. The killing of a child at birth is a criminal offence: a mother who kills her child during delivery or while still experiencing the effects of the birth process shall be punished by imprisonment of one to five years (Penal Code, sect. 79). The killing of a child at birth (Penal Code, sect. 79) is a "privileged" case of intentional killing. The grounds for the privilege under criminal law as opposed to murder is that the mother experiencing the effects of childbirth is under extreme physical and mental stress and is therefore in a state of diminished responsibility.

116. The "abandonment" of a child already born (Penal Code, sect. 82) is also liable to prosecution. As regards the psychological element, abandonment requires the intent to endanger life (objectively, section 82, StGB is a

specific endangering offence which is completed when the situation of danger begins), which, because of the often difficult delimitation as regards evidence, means that this provision is seldom applied. The abandonment of a child with intent to endanger its life (Penal Code, sect. 82, para. 2) is punishable by imprisonment of from six months to five years. According to case law, the abandonment of a suckling also falls under this stipulation as the provision of sufficient nourishment is neglected.

117. Also liable to prosecution is the abandonment of an under-age child (Penal Code, sect. 197), i.e. the "putting aside of a child without the intent to endanger its life", the gross neglect of care, upbringing or supervision, causing a minor to be neglected (Penal Code, sect. 199), as well as the "gross neglect of under-age, younger (not yet 18 years old) or other defenceless persons (Penal Code, sect. 92, para. 2) needing the care or custody of the perpetrator, as a result of which considerable damage is caused to health or physical or mental development.

118. Also providing for the special protection of "younger" persons (until their eighteenth birthday) who are subject to the care or custody of another person is section 93 of the Penal Code. The relatively high penalty for the excessive straining of under-age or younger persons or persons requiring care (up to two years' imprisonment) is justified firstly by the severe unworthiness of behaviour if the victim is "overstrained out of malice or inconsiderateness", thereby exposing him to the risk of death or considerable physical injury or damage to health - even if only by negligence.

119. In addition, the life and physical integrity of children and adolescents are protected by the general provisions of the Penal Code (Special provisions, Part one: Offences against life and limb). The extensive regulations for safeguarding and promoting the healthy development of the child are mentioned in chapter VII, section A below.

120. Whereas the mortality risk for infants and small children has decreased considerably in Austria on account of the high standard of health facilities and the comprehensive statutory provisions for the protection of life (statistically, the probability of reaching at least 15 years is 99 per cent), the risk of dying in adolescence has, in contrast, been reduced less dramatically during the twentieth century. Death in adolescence is generally caused by violence: 75 per cent to 80 per cent of all cases are due to accidents (1991: 57 per cent), poisoning and suicide (1991: 20 per cent) (Youth 18).

D. Respect for the views of the child

121. The obligation resulting from article 12 to guarantee the child that appropriate account will be taken, corresponding to age and maturity, of his or her opinions in all matters that concern him or her, affects all areas of the child's life: the family, school or other forms of child care, proceedings at court or with the authorities, as well as processes of formulating political objectives and decision-making.

122. Before youth welfare measures such as "child rearing assistance" are authorized or a child is taken into "full-time care", a child who has attained the age of 10 has the right to personally put forward his/her views on this decision. If a child is younger, he/she may make his/her views known appropriately, for instance through a child psychologist.

123. Decisions regarding the education of a child are generally taken by the parents or other persons legally responsible for the child, after consultation with the child. However a child of 14 may put forward to his/her parents his/her differing opinions as to his/her further education and, if necessary, prevail against them. If a child has informed his parents of his education wishes without success, a 14-year-old may appeal to the courts for a decision. The courts must then form an accurate impression of the circumstances of the matter, conducting an in-depth examination of all parties concerned as to their motives and deliberations. After carefully weighing the reasons given by the parents and the child, the court will finally decide in favour of the well-being of the child.

1. Party rights in court and administrative proceedings

124. In cases before the court of guardianship concerning personal circumstances, case law grants party rights to minors who are of age. They may file motions on their own and lodge an appeal without having to call upon a legal guardian (or lawyer).

125. "Taking the child's opinion into account" has been a compulsory requirement since the 1989 Parent(s) and Child Amendment Act, Federal Law Gazette No. 162, which introduced the provision of section 178 b of the ABGB concerning "Taking the child's opinion into account". Before orders affecting the care and upbringing of the child are issued, the court must hear the child "personally, if at all possible". From the age of 10, the child itself must be heard by the court. Up to the age of 10, the questioning of the child may also be carried out by the youth welfare officer or in some other suitable way. The court may refrain from hearing the child only if the resultant delay would jeopardize the well-being of the child or if, in view of the age and development of the child, an expression of opinion cannot be expected.

126. The hearing of the child is intended first and foremost to contribute to a broadening of the basis for the court's decision in guardianship proceedings affecting the child. However, provision is not made for the courts to be bound by the child's opinion. In practice, in the courts, the older the child is, the more important a role the child's opinion plays. Both in decisions on visitation rights and decisions on a division of custody following a divorce or the separation of the parents, the opinion of older children is generally not disregarded. The position is similar in respect of disputes over the residence of the child.

127. Mention should also be made of the right of a disabled child to have his say in the appointment of an advocate, or, in the case of a mentally disabled child, about being accommodated in a psychiatric establishment. (For further details see chap. 6, sect. J, below).

2. Opportunities to have a say and to exercise self-determination in schooling matters

128. In schooling matters, pupils are, in principle, represented by the persons legally responsible for them. Opportunities to be heard in school matters are graded according to age. From the age of 14, a pupil shares responsibility with his/her parents for fulfilment of the requirement of regular school attendance. From the fifth grade upwards, pupils may participate in shaping school life either directly or indirectly by means of a chosen representative. However, from the ninth grade upwards (i.e. on attaining the age of 14), pupils have an independent capacity to act, or party rights, in some school matters, for example, application and registration for and withdrawal from participation in optional subjects and religious instruction, requests for permission to repeat a school year, or notification of inability to attend school. The sole requirement for acting on his own authority in such matters is that the pupil must demonstrate that he has brought his actions relating to school concerns to the attention of his parents or other persons legally responsible for him. (For further details on co-determination at school, see chap. VIII, sect. B, below.)

129. To represent the interests of pupils, all school speakers in each Land elect regional pupils' representatives; all the regional representatives make up the federal association of pupils' representatives. These representative bodies have the right to make proposals for modifying school laws and participate in the review of draft school laws, which means that their influence on school development should not be underestimated.

3. Participation as an apprentice or adolescent employee

130. The Arbeitsverfassungsgesetz (Employment (Principles) Act) provides that, in companies with at least five adolescent employees, special representative bodies are to be formed for adolescents:

> The Youth Assembly chooses from among its members:
>
> The Youth Representative: every adolescent employee, irrespective of his age, has the right to vote and to stand for election, i.e. he may choose a candidate, and may also propose himself as a candidate for the function of youth representative. Even an adolescent employee under the age of 19 may run as a candidate without the approval of his legal guardian, and may exercise the rights and assume the responsibilities deriving from the function of youth representative;
>
> The Assembly of Youth Representatives, which comprises all the youth representatives of a company, chooses from its members:
>
> The Central Youth Representative: the youth representatives or central youth representatives of a company may combine to form a
>
> Joint Committee.

The Youth Representative has the task of looking after the economic, social, health and cultural interests of the adolescent employees in the company.

4. Direct democratic (political) participation of children and adolescents

131. In Austria, equal suffrage was introduced for male and female citizens in 1918. Since the right to vote in elections to the Nationalrat or the parliaments of the Länder is not obtained until the age of 18, children within the meaning of the Convention are, in principle, excluded from voting. Since the opportunities for cooperation, participation and the involvement of children in local political decision-making processes (such as referenda or citizens' action groups) also depend on being of voting age, children and adolescents are excluded from any form of democratic cooperation, participation or involvement. Resulting from the awareness of the lack of institutional political representation for children, several "informal" children's participation models initiated in recent years convey the message that the ideas of "future generations" now have to be taken seriously, and that account should be taken of their political concerns.

132. In some municipalities and towns, "children's local councils" - at present set up informally - represent children's concerns in local politics (for example, in planning the living, school and play environment) and act in a corresponding advisory capacity for the municipal or town council. In this advisory function, the "children's local council" can deal with child-relevant topics. It can advise the municipal authorities (mayor and council) on specific subjects of interest, make suggestions to them, give its views on specific projects, and make recommendations and suggestions on specific administrative decisions. A "children's representative" on the local council can perform the intermediary and contact function between the children and the council.

133. The positive experience gained with the existing participation models has led to a fundamental discussion as to whether the "informal participation models" for children currently being set up on the basis of the goodwill of individual mayors and "city fathers" should be given a legal standing, so that they can be embodied institutionally.

134. In 1991, an all-Austrian Students' Parliament was held for the first time. Since 1992, the so-called Students' and Apprentices' Parliament has met annually. Thirty members of the Federal Pupils' Representation Body, 92 school speakers and 61 apprentices meet in the Austrian Nationalrat, hold a question hour with the Austrian Federal Chancellor and Vice Chancellor, conduct a plenary debate with government ministers, and hold further discussions with the chairmen of the political parties and other Nationalrat members about the political concerns of schoolchildren and apprentices. In the Länder of Lower Austria, Tyrol and Vorarlberg, youth parliaments are held annually.

135. Worth mentioning in this context is a draft bill submitted recently by the parliament of the Land of Carinthia to amend the Local Government Act, with the aim of increasing the integration of adolescent local council members (including adolescents who are not Austrian citizens) at the local council level. According to the draft bill, a mere 3 per cent of adolescent local council members aged 15 or over will be able to force a referendum on their

own initiative in matters that are of interest to them. In addition, all mayors of every local council are to invite the adolescent council members, at least once a year, to a public youth forum, giving adolescent council members an opportunity to approach the council with their concerns and to discuss them with the political parties.

136. The Federal Ministry for the Environment, Youth and the Family has launched the project "Jugendumweltplan", which enables young people to participate in the policy-making process regarding environmental issues.

137. Austria hosted an international conference in Vienna in October 1996 where environmental projects and initiatives were presented by children and adolescents from Germany, Switzerland, the United Kingdom, Hungary, the Czech Republic and Denmark.

138. As already mentioned, in order to strengthen the participation of children and adolescents in Austria, the Federal Government was called upon in resolution E 156-NR XVIII. GP to examine possibilities for political and professional forms of participation, graded according to age, and to ensure adequate participation opportunities for children and adolescents in planning processes and in shaping all projects having specific relevance to them. (For further information, see chap. II above).

139. This request to the Government was made not least because of a general, generational political problem of democracy, since forecast population trends in Austria - as in comparable Western European countries - make it clear that society is rapidly ageing, while simultaneously a decreasing birth rate is recorded. Consequently, the relative proportion of older (over 60, entitled to vote) persons in the total population of Austria is constantly increasing, whereas the relative proportion of children/adolescents (excluded from any form of political participation) is steadily declining. To make matters even worse, the "lack of political enthusiasm of young people" in Austria is a constant complaint.

140. According to figures supplied by the Central Statistical Office (see Introduction, above), demographic prospects give rise to enormous pressure to overcome the problem of the increasing shift of the political momentum to the older generations which, in the view of experts and, gradually, of politicians too, should be countered as soon as possible - two of the methods being motivating young people to participate in the political process and expanding their opportunities for political participation in general.

V. FUNDAMENTAL RIGHTS AND FREEDOMS

A. The rights of the child in the context of fundamental rights

141. In the interest of children and youth, the Austrian Parliament requested the Federal Government, in resolution E 156-NR XVIII. GP, 1, to explore the possibility of enacting the principles of the Convention on the Rights of the Child in constitutional law. In complying with this resolution the Federal Ministry for the Environment, Youth and the Family has, in cooperation with the ombudsmen of the Länder agreed to launch a study for this purpose.

B. Descent, name and nationality (art. 7)

142. The Austrian legal system takes full account of the requirements of article 7 of the Convention. The birth of a child is entered in the register of births. The birth must be reported to the relevant registrar within one week in the following order: by the head of the hospital in which the child was born, the doctor or midwife who was present at birth, the father or mother, provided they are capable, the authority or department of the Federal Police investigating the birth, or by other persons who have knowledge of the birth on the basis of their own perception.

143. Before an entry is made in the register of births, the entitled persons (generally the married parents or the mother of an illegitimate child) must declare in writing the first names they are giving the child (sect. 21, para. 1, of the Personenstandsgesetz (Civil Status Act)). If the married parents cannot agree, the court of guardianship that must decide on the first names shall be informed.

144. The surname of the child is governed by whether it was born legitimate or illegitimate. Under section 139 of the General Civil Code, a legitimate child is given the common family name of its parents. If the parents have no family name in common, the child shall be given the surname that the parents decided, either before their marriage or upon marriage, should be given to children from the marriage; if no such decision was made, the child gets the surname of the father. Under section 165 of the General Civil Code, an illegitimate child is given the surname its mother had at the time of its birth.

Descent

145. The descent of a child is determined by its birth. The child is assumed to be legitimate (and the husband to be the father of the child) provided it was born after the marriage and within 302 days after the dissolution or annulment of its mother's marriage. This assumption can be invalidated only by a court decision which establishes that the child is not from the mother's husband (General Civil Code, sect. 138, para. 1). If a child is born after 302 days have elapsed following the dissolution or annulment of its mother's marriage, it is assumed that it is illegitimate. This assumption also may be invalidated by a court decision (General Civil Code, sect. 155).

146. A man who has lived with the mother for a period of not more than 302 and not less than 180 days before the birth is assumed to be the father of an illegitimate child (General Civil Code, sect. 163, para. 1). Paternity of an illegitimate child can be established only by judgement or by acknowledgement (General Civil Code, sect. 163 b). It is also possible to acknowledge paternity of an unborn child. The legal guardian shall ensure that paternity is established, unless establishment of paternity would be disadvantageous to the well-being of the child, or the mother takes advantage of her right not to disclose the name of the father. The mother of a child who makes use of her right not to disclose the name of the father must be made aware by the Youth Welfare Office of the consequences (primarily in respect of residence and inheritance rights) if paternity is not established (General Civil Code, sect. 163 a, paras. 1 and 2).

147. The Youth Welfare Office is informed of the birth of every child - including legitimate children - by the registration authorities, and shall advise the child's legal guardian and, if necessary, offer assistance. The child's legal guardian may entrust the Youth Welfare Office with the administration of establishing the child's paternity (General Civil Code, sect. 212).

148. Pursuant to section 19, No. 4 of the Civil Status Act, the surnames and first names of the parents, their place of residence, the place and registration of their births and their membership of a legally recognized church or religious society are also entered in the register of births. Pursuant to section 37, paragraph 1 of the Civil Status Act, persons to whom the registration refers, i.e. including children, have a right of access to the register of births, deaths and marriages.

149. In the special case where a child has been conceived with the sperm of a third party using medically assisted reproduction techniques, section 20 of the Fortpflanzungsmedizingesetz (Reproductive Medicine Act) provides the child (after the age of 14) with the right to inspection of and information from the records on its natural father that must be kept by the hospital, thus expressly laying down the right of a child conceived with the aid of modern medical reproductive technology to know its descent.

Nationality

150. Pursuant to section 7, paragraph 1 of the Staatsbürgerschaftsgesetz (Nationality Act), Austrian nationality is conferred on legitimate children at birth if, at that time, one of the parents is an Austrian national, or one of the parents who has previously died was a national on the day of death. Pursuant to paragraph 3 of the above provision, illegitimate children obtain Austrian nationality at birth if their mother is an Austrian national at this time. A child born out of wedlock may obtain Austrian nationality by subsequent legitimization, if its father is or was an Austrian national (sect. 7 a, para. 1 of the Nationality Act). Until proof is furnished to the contrary, a foundling aged less than six months that is discovered in Austria is also deemed to be an Austrian national (sect. 8, para. 1 of the Nationality Act).

151. Regarding article 7, paragraph 2 of the Convention, reference is also made to section 14 of the Nationality Act, which provides simplified conditions for a child born in Austria that has been stateless since birth to obtain Austrian nationality.

C. Preservation of identity (art. 8)

152. The rights of the child to a name, nationality, knowledge of parents, to retention of its identity, nationality, name and legally recognized family relationships are safeguarded in Austria by civil and administrative legislation. In some cases, there are, in addition, sanctions under administrative penal law. The only judicial penal sanction in this connection

is contained in section 200 of the Penal Code "Foisting a child on someone": foisting a child on someone consists in creating the impression, by whatever means, that the child is the natural child of a person, when in reality that is not the case.

153. Adoption, as a special case provided for by law in which a change in family relationships is permitted, presupposes an examination of whether this change is in the interest of the child. Legal adoption (sect. 179 et seq. of the General Civil Code) leads to the adopted child obtaining the legal position of a legitimate child, and generally being given the surname of the adopting party (cf. sect. 183 of the General Civil Code). For this reason, the court is obliged to hear any child chosen for adoption who has reached the age of five and does not have the capacity to act; if, according to its personal status, the child's agreement is required, that right shall also prevail.

154. Austrian law also safeguards the personal rights of minors, in particular the right to bear a name. If a person is 15 years or older, changes of his surname (by legitimization, adoption, name changes under the auspices of the administrative authorities) or first name may only be made with the consent of that person. In the case of an adopted child, the adoptive parents may change its first names up to its second birthday. In the case of a child of 14 any change of surname through adoption is possible only if the child itself personally agrees.

155. Section 7 a of the Mediengesetz (Media Act) grants a special right under civil law to compensation, in certain circumstances, to (victims and) suspects of a criminal offence in the event of disclosure, without permission, of their identity through a media report. The law assumes that the legitimate interests of those concerned are injured in all cases where the identity of an adolescent is published.

D. Freedom of expression (art. 13)

156. The right to freedom of expression is guaranteed by the Constitution to "everyone", which of course includes children and adolescents. Article 13 of the Austrian Basic Law concerning the General Rights of the Citizen provides that "everyone has the right within the limits of the law freely to express his opinion by word of mouth and in writing, print, or pictorial respresentation". Freedom of information is also guaranteed at the constitutional level by article 10 of the European Convention on Human Rights. Since the limitations which are permitted under article 13, paragraph 2 of the Convention lag behind the limitation options of article 10, paragraph 2 of the European Convention on Human Rights on the one hand, and the extent of freedom of information and freedom of the press is determined under constitutional law on the other, a reservation was required to be made, not least in the interest and for the further protection of the well-being of children.

157. The freedom of information guaranteed as such under constitutional law may be restricted by law in order to protect certain interests (arts. 8 and 10 of the European Convention on Human Rights): legitimate interests include national health, for which reason freedom of advertising of, for example, banned drugs, alcoholic beverages and tobacco products is legally restricted.

Under the Tobacco Act, which came into force on 1 September 1995, poster advertising of tobacco products in the vicinity of schools, as well as advertising of them on television, is banned.

158. In order to promote a critical approach towards the media in children, adolescents and also adults, and to ensure that films meet the requirements of youth protection, a Youth Film Commission, comprising educators, media experts and representatives of the film industry, evaluates cinema films and makes recommendations on the media-educational suitability or permissibility of films for children and adolescents to teachers, parents' organizations and pupils. The list of recommended films is exhibited in schools on a noticeboard. Computer games are examined in a similar way for their suitability for children, especially in respect of their educational value, and the results of this "child-focused examination of computer games" are published.

159. Austrian media proprietors and media employees have undertaken to ensure the protected interests of children and adolescents by means of self-policing standards (rules of conduct; Media Council directives) and by voluntary self-checks (in the case of films).

160. The legitimate grounds for the restriction of the freedom of information guaranteed under the Federal Constitution (arts. 8 and 10), also include "morals". Such restrictions generally comply with the aspects of youth protection and of protection from confrontation and harassment, and represent, particularly in the case of pornographic representations of children, violence and animals ("hard-core pornography"), an urgent social necessity. The Gesetz über die Bekämpfung unzüchtiger Veröffentlichungen und den Schutz der Jugend gegen sittliche Gefährdung (Act to Combat Obscene Publications and to Protect Young People from Moral Danger) dating from 1950 (the "Pornographiegesetz" ("Pornography Act")) is also regarded as the "Jugendschutzgesetz" ("Young Persons Protection Act"). The aim of this Act is the moral protection of young people from the flood of obscene publications and illustrations. The Pornography Act punishes the producers, dealers or distributors of pornographic material with fines or imprisonment, if "hard sex", such as homosexual sex, banned sex with children, or sex with animals, etc., is shown in the pornographic material offered. Now, pursuant to the new section 207 a of the Penal Code, which was passed on 16 July 1994, it is no longer just the commercial, but also the amateur production and distribution of child pornography products (non-commercial barter and black market) that is punishable with penal sanctions, thereby incorporating an absolute ban on putting child pornography into circulation.

161. Even though the production and marketing of soft-porn products are not liable to prosecution under the Pornography Act, the young persons protection legislation of the Länder forbids the sale or renting of pornographic material to adolescents; neither may cinema performances that pose a "hazard to youth" be attended by adolescents. As for information material that may negatively affect the moral, mental or health-related development of adolescents by, for example, inducing adolescents to commit violent or criminal acts or stimulating them to lechery or misdirecting their sexual urge, the head of the regional government may impose a ban on its sale or rental to adolescents below the age of 16. In the case of serious violations of the Pornography Act

and the youth protection provisions contained in this Act or in the youth protection laws, a business proprietor may have his trade licence withdrawn (Gewerbeordnungsnovelle 1992 (Trade Regulations Amendment), Federal Law Gazette No. 194/1993).

162. The new Fernmeldegesetz (Telecommunications Act) of 1993, (Federal Law Gazette No. 908/1993), also places any misuse of telecommunications equipment constituting a threat to morality under administrative jurisdiction, and the amended Rundfunkgesetz (Broadcasting Act) of 1993 (Federal Law Gazette No. 505/1993) further ensures that television broadcasts do not contain programmes showing pornography.

E. Access to appropriate information (art. 17)

163. Only a modest range of children's magazines are offered for sale in Austria. Not least owing to the frequent reporting of children's rights in Austria, the Austrian daily and weekly newspapers have realized the advantage of providing children and young people with their own information section in which they report on child care, the options for looking after children, and leisure and cultural activities for children. Children have their own child supplements now in virtually all daily and weekly newspapers. One of the biggest daily newspapers in Austria has set up a child editorial section to which children and young people are invited in order to gain media experience and to design their own special issue children's newspaper for themselves and for children who read newspapers. The result of this project is a weekly children's supplement in which children can publish their own reports.

164. In order to reward the efforts of the newspaper producers, the best school newspapers from the various school grades, including special schools for disabled children, will be chosen by a jury of journalists, teachers and pupils, and presented with prizes. A Commission for Children's and Young People's Literature set up in the Federal Ministry of Education conducts reviews and gives ratings, and publishes regular lists of recommendations.

165. The Austrian Broadcasting Corporation (ORF) has to fulfil the statutory educational duty of "adult and youth education" (Rundfunkgesetz I, (Broadcasting Act) sect. 2. 2) through which social and political learning is promoted and the formation of awareness and of personality are assisted. Help in perceiving educational responsibility, especially of the family, must be offered to a certain degree by the way in which children, adolescent and family programmes are fashioned (programme directive).

166. ORF Children's Television has a duty to offer children up to the age of 11 genuine children's programmes. The children's programmes begin at 7 a.m., and the afternoon children's programmes begin at 3 p.m. and end at around 5 p.m. when "Mini-ZiB", a news programme for children, gives way to the early evening programmes. The programming directives for children's programmes take account of the particular responsibility vis-à-vis children: "Since children are more sensitive than adults, programmes that will be viewed by, or are aimed at, children shall be selected and designed with particular care. It must be borne in mind that realistically portrayed scenes of violence from the world in which the child lives have an especially unsettling

effect on children. Violence here means not just physical or verbal conflicts between people, but also psychological threats, material danger or cruelty to animals."

167. In the 1993 Rundfunkgesetz-Novelle (Amendment to the Broadcasting Act), general programming principles for the electronic media in Austria were laid down:

> Article 1 (3). "Television broadcasts shall contain no programmes that could seriously impair the physical, mental or moral development of minors, especially ones showing pornography or groundless violence. In the case of television programmes that could impair the physical, mental or moral development of minors, it shall be ensured through choice of transmission time that these broadcasts cannot normally be seen by minors."

168. The business terms and conditions for advertising in ORF programmes represent a code of ethics for public broadcasting according to which, for example, it is not permitted to use children in advertising messages that aim at making children exert psychological pressure on parents or legal guardians to purchase certain products. Advertising spots in which (i) invitations to consume are sent directly to children, or (ii) invitations to consume are - by using children - sent to adults by children, or (iii) invitations to buy are - by using children - sent to children by children as the target group either directly or indirectly, or (iv) child imitations take place, shall not be accepted by those responsible for programming.

169. A "representative group of listeners and viewers" may direct complaints about infringements of the above legislation to the Broadcasting Commission, which shall then be judged by them. Children and adolescents are represented in this "representative group of listeners and viewers" because they are delegated by the Federal Chancellor at the suggestion of family, youth and children's organizations.

170. At school, children are prepared for dealing with the media through use of "media education" as a teaching principle. The main points of emphasis in the area of media education - such as violence and horror in the media - are set on the basis of an examination of the efficiency of teaching materials for media education.

171. ORF regularly transmits in Croatian, primarily in the regional programmes for ethnic groups (in 1990, an average of 285 minutes per week on radio and 30 minutes on television), Slovenian (in 1990, an average of 370 minutes per week on radio and 30 minutes on television) and Hungarian (in 1990, 25 minutes per week). In Vienna, the Austrian capital, a half-hour programme "Homeland, foreign homeland" is transmitted every week for all ethnic groups in Vienna, including the "guest workers".

F. Freedom of thought, conscience and religion (art. 14)

172. In Austria, freedom of thought, conscience and religion for everyone has been constitutionally enshrined in the "Staatsgrundgesetz 1857" (Basic Law on the General Rights of the Citizen). According to the legal opinion of the

Constitutional Court, however, the legal capacity of the child to exercise the basic right to freedom of thought and conscience depends on his or her level of understanding. The Federal Act on the Religious Education of Children, 1985, Federal Law Gazette No. 155, regulates various questions concerning the religious education of children. In accordance with this Act, the free agreement of the parents, who are legally responsible for the child's care and upbringing, determine his or her religious education. If such agreement does not exist, or if it no longer exists, the provisions of the General Civil Code concerning care and upbringing also apply to religious education. In an existing marriage, however, one parent may decide, without the agreement of the other, that the child will be instructed in a faith other than hitherto. If necessary, redress may be sought in the court of guardianship. If, however, responsibility for the care and upbringing of the child rests not with the parents but with a guardian or advocate, the latter shall decide as to the religious education of the child.

173. On reaching the age of 14, the child is free to choose the religious faith he or she wishes to adopt. On reaching the age of 12, he or she may not be instructed against his or her will in a faith other than the previous one. The provisions of the Federal Act on the Religious Education of Children also apply to the instruction of children in a non-religious philosophy of life.

174. Since, in Austria too, various youth religions, psycho-cults and (pseudo) religious groups are increasingly directing pseudo-religious and pseudo-therapeutic messages at young people, often subjecting them to psychological, physical and economic pressures, the Austrian Parliament requested the Austrian Federal Government, in a resolution of 14 July 1994, to take measures in connection with sects, pseudo-religious groups, associations and destructive groups; such measures include, above all, the production of information material, the implementation of explanatory campaigns in schools, and support measures for self-help groups for young people affected and those leaving such sects, plus the setting up of a helpline.

175. In the Division for School Psychology and Educational Counselling of the Federal Ministry of Education and Cultural Affairs, a service has been set up which deals with the psychological effects of destructive cults and ideologies on children and adolescents. This service offers information and counselling to the pupils, parents and teachers concerned and those interested in the subject and cooperates with public, denominational and private counselling services on an interdenominational basis.

176. Specific advice and support is provided by the "Society against the Dangers of Sects and Cults".

G. Freedom of association and of peaceful assembly (art. 15)

177. Freedom of association and peaceful assembly is constitutionally guaranteed by article 12 of the Austrian Basic Law on the General Rights of Nationals (StGG), by article 11 of the European Convention on Human Rights and Freedoms (EMRK) and by point 3 of the resolution of the Provisional National Assembly of 30 October 1918. The restrictive options provided for under article 12, paragraph 2 of the StGG do not, however, coincide with those of article 11, paragraph 2 of the European Convention on Human Rights,

which means that a reservation is again necessary here to ensure that the European Convention on Human Rights takes precedence over the present Convention.

178. It should be noted, however, that in Austria maturity for basic rights traditionally varies in respect of the individual basic rights. The maturity of children for basic rights is not laid down in any general abstract regulation. Evaluation always has to take place in accordance with the prevailing case law of the Constitutional Court and with the nature of the particular basic right, taking account of the extent of the child's capacity to act. Thus, pupils in secondary education who are minors (those between the ages of 14 and 19) are entitled to freedom of association since they already possess restricted legal capacity. Freedom of assembly is not restricted according to age.

179. However, the authorities must be informed in advance about demonstrations by their organizers so that the necessary preparations, such as traffic detours or barriers, may be set up. If it is feared that the demonstration may turn into violence against other persons or the destruction of third-party property, a body of police officers will accompany the demonstration. On 29 June 1994, a children's demonstration for the rights of children took place in Vienna, with a procession along Vienna's main street to Parliament where, in addition to a play and a live show on children's rights, a discussion took place between a children's delegation and members of Parliament.

H. Protection of privacy (art. 16)

180. The basic rights contained in articles 8 and 12 of the European Convention on Human Rights, which rank as constitutional law in Austria, protect not just adults but also children in their private and family life. In family law, these fundamental basic rights are expressed in the above-mentioned principle of family autonomy (sect. 137 a, of the General Civil Code), according to which third parties may intervene in parental rights only to the extent permitted to them by the parents themselves, directly on the basis of legislation or through an official decree.

181. The protection of privacy and the autonomy of the family in particular are also ensured in the field of public education since article 17 of the Basic Law of 1867 provides that every national who has furnished in a legally acceptable manner proof of his qualification has the right to found establishments for instruction and education. Instruction at home is subject to no such restriction. This article of the Federal Constitution entails the obligation of the State to permit private schools to be operated and the possibility for children to be released from compulsory school attendance and to receive instruction at home instead. However, home instruction and instruction at a private school, which is not legally recognized, must at least be equal to that offered by public schools. At the end of every school year, such equality must be shown through examinations taken by non-resident pupils at an appropriate public school.

182. One important aspect of the protection of the private sphere of children is respect for the secrecy of correspondence. According to an investigation

by the Fessel Institute in 1991, it had happened to 5 per cent of children between 6 and 13 at least once that secrecy of correspondence was not maintained. Among the 14- to 17-year-olds, around one tenth seldom experienced conflicts with their parents and one sixth had frequent conflicts because they "open and read letters addressed to me, or my diary, without my permission". Infringement of the secrecy of correspondence at some time did not apply at all to three quarters of adolescents, and tended not to apply to one seventh. Eight per cent stated that an infringement of the secrecy of correspondence had occurred. It appears therefore that, in this age group, although secrecy of correspondence is maintained for the majority, it can frequently lead to a controversial discussion between parent and child. However, every second young person thinks that he could resist an infringement of the secrecy of correspondence.

183. Knowledge of the right of the child to maintain secrecy of correspondence and the inviolability of a diary or other written exchanges was as follows: 36 per cent of 6- to 13-year-olds knew about this right, as did 69 per cent of 14-year-olds and 79 per cent of 16-year-olds, but only every other adult (over 18) claimed to have knowledge of the right of the child to maintain secrecy of correspondence and inviolability of its diary or other written exchanges. There is no majority in the Austrian population over 18 who regard this right as "very important" (47 per cent). Almost one third think of it as "rather unimportant". However, three quarters of those asked rejected the idea that parents should have the right to read letters addressed to their children or diaries written by them. A minority of one sixth were in favour.

184. For people in general - children, adolescents and adults alike - the right to personal dignity is one of the objects of legal protection that is protected absolutely. Section 47, paragraph 3 of the Schulunterrichtsgesetz (Teaching Act) forbids injuring the personal dignity of pupils with the following stipulation: "In order to maintain discipline in schools, teachers may not have recourse to means that would injure the human dignity of pupils, such as corporal punishment or insulting remarks or collective punishments." Corporal punishment and severe verbal insults directed towards children and adolescent employees are, naturally, also forbidden under the Kinder- und Jugendlichenbeschäftigungsgesetz (Children's and Adolescents' Employment Act). Since children possess the same personal dignity as any other person, they are, in principle, entitled according to the letter of the law to full protection against injury to their honour or reputation. However, this question of the protection of honour under penal law (sect. 111 et seq. of the Penal Code) for children has been viewed differently by jurisprudence: it has been affirmed when a child has entered a certain sphere of responsibility in attending school and has thereby become an "ethical personality"; the other legal opinion objects to this restriction.

185. Injury to personal dignity may also be punished under penal law (Penal Code, sect. 111: "Defamation"): anyone who in such a way that it may be perceived by a third person accuses another of possessing a contemptible character or attitude or of behaviour contrary to honour or morality and of such a nature as to make him contemptible or otherwise lower him in public esteem is liable to punishment. A child or adolescent may further demand that action be taken under penal law against a person if he has been

insulted, mocked, mistreated or threatened with ill-treatment by that person in public or in the presence of several others (Penal Code, sect. 115: "Insult").

I. Torture or other cruel, inhuman or degrading treatment or punishment

186. Under the Austrian Federal Constitution, the death penalty has been completely abolished. Under the Penal Code, it is impossible to impose a life sentence if the person convicted was under the age of 20 when the offence was committed. Otherwise, all violations of the right to life and of physical integrity are penalized by penal statutes. The ban on torture and any inhuman or degrading treatment (art. 3 of the European Convention on Human Rights) is enshrined in the Federal Constitution. Under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which was ratified by Austria, the use of statements obtained by torture is prohibited (art. 15).

187. Moreover, Austrian penal law generally prohibits torture, cruel, inhuman or degrading treatment or punishment. The arrest, detention or imprisonment of a young person shall be used only as a measure of last resort and for the shortest appropriate period of time. Before sentencing a minor to imprisonment, other alternatives have to be considered.

VI. FAMILY ENVIRONMENT AND ALTERNATIVE CARE

188. The different types of family in Austria are classified as follows:

Status	1961	1971	1981	1995
Family with children	1 283 754	1 312 215	1 369 012	1 457 400
Both parents	1 024 538	1 087 756	1 111 736	1 107 900
Only one parent	259 216	224 459	257 276	286 500
Father		24 033	30 830	35 800
Mother		200 426	226 446	250 700
Single mother (widowed/divorced)		158 737	177 951	189 600
Single father (widowed/divorced)				
Single father (unmarried)				
Married couple (no children)	575 501	617 449	617 329	784 900
Total families	1 859 255	1 929 664	1 986 341	2 242 300

The Central Statistical Office defines "families" as follows: in terms of the population census, a family is either a married couple or a long-term partnership with or without children, and also a single parent with children. Children, according to the terms of Family Statistics are all the parents' own children living under the same roof and any stepchildren or adopted children who themselves are not yet married or have children of their own - irrespective of age and occupation. (ÖStZ 1989).

189. In Austria "childhood" continues to be defined as "childhood within a family" mainly because 98.9 per cent of children under the age of 15 grow up in a family and only a remaining 1 per cent of all children live in institutions or children's homes and in households not considered a family in a statistical sense, such as for example living with relatives who are neither the parents nor the grandparents. Of children under the age of 15 growing up in a family, 89.3 per cent live with both parents and 10.7 per cent grow up in single-parent families. Eleven per cent of children growing up in single-parent families live with their father, 89 per cent with their mother. It is assumed that approximately 5 to 6 per cent of children live in step-families. Under the age of 15, 98.3 per cent of all children live with their natural mother; only 1.4 per cent do not live with their mother, and in 0.3 per cent of cases the mother has died. However, "only" 89.1 per cent of children live with their natural father, 9.3 per cent do not live with their father, and in the remaining 1.6 per cent of cases the father is dead. Around 98 per cent of children under the age of 15 still have both their parents.

190. In 1989 the number of children under the age of 15 who found themselves in a family substitute situation was 3,067. Of these, 372 children lived with relatives, 1,615 in foster families, 1,008 in children's homes and 72 in a common household with people not from the same family or in other forms of establishment. With regard to families with children, every second family is a single-child family, approximately 30 per cent of children grow up as single children, 40 per cent of children of all age groups live in families with two children.

A. Parental guidance (art. 5)

191. Austrian family law is based on the principle of family autonomy (sect. 137 a of the General Civil Code). This means that any interference with the legal relationship between parents and children may only take place if permitted by the parents themselves, by law or by official order. Custody of the legitimate child, i.e. parental rights and duties, are incumbent upon both parents by law when the child is born. Custody of the illegitimate child, however, is solely incumbent upon the mother. Apart from administration of property and representation of the child custody also includes the parents' right and duty to look after and bring up the child, i.e. to care for it. Any interference by the courts (or youth welfare authorities) with this right of care and upbringing is generally only possible if the child's interests are in danger.

192. Custody of legitimate children is in the first place incumbent upon the child's parents jointly. They must ensure their children's education and

upbringing in general and promote their interests in particular. Parents and children must assist each other and children must respect their parents (sect. 137, paras. 1 and 2 of the General Civil Code). Parental rights and duties are summarized by the term "custody": according to this, parents must (and may) look after and bring up the under-age child, administer his/her property and represent him/her. As far as care is concerned, they must ensure physical well-being and health as well as exercise direct control. As far as the child's upbringing is concerned, they must take particular account of the development of physical, mental and moral strengths, the encouragement of talents, abilities, inclinations and possibilities of development as well as his or her education and training. The level of care and education depends on the parents' standard of living (sect. 136, paras. 1 and 2 of the General Civil Code).

193. Parents of legitimate children have joint custody. Should one parent for various reasons not be in a position to exercise this right, the other is entitled to do so on his/her own. If the parent having sole custody is prevented from exercising it, the courts (bearing in mind the interests of the child) must decide whether custody should be granted entirely or partly to the other parent or whether it should be granted to (a) grandparent(s), and to which (sect. 145, para. 1 of the General Civil Code). Custody as a central parental right may also be transferred entirely or partly to the youth welfare authorities if the child's interest is at risk and its complete removal from its present environment therefore becomes necessary against the will of the child's parent or guardian and if it is not possible to place the child with relatives or any other suitable person close to the child (sect. 176 a of the General Civil Code). Finally, the court may also transfer custody entirely or partly to foster parents (sect. 186 a of the General Civil Code). If there is not at least one person/body (parent(s), grandparent(s), youth welfare authorities, foster parents) entitled to limited legal representation (of the child) within the framework of custody, the courts must appoint a guardian (sect. 187 of the General Civil Code).

194. Custody of an illegitimate child is solely incumbent upon the mother. Should she be prevented from exercising such custodial rights, the courts must decide to whom they are to be transferred (father, grandparent(s), youth welfare authorities, foster parents). Upon application by the child's parents, the court may also transfer joint custody of the illegitimate child to them both, if they live under the same roof and the court order is not in conflict with the child's well-being.

195. Generally public youth welfare authorities may offer child-rearing assistance to support parents in the upbringing of their children, above all if there are any difficulties bringing up the child: this can be done through educational and family counselling, through socio-educational family aid, through family and play therapies or special needs therapy, either individually or in groups in a day-care centre. This kind of intervention leaves the child in its family environment and improves the parents' ability to bring up the child, above all with regard to their awareness of a non-violent upbringing.

Number of cases in which child-rearing assistance was granted in 1993	
Child-rearing assistance, total	18 362
Promotion of family's child-rearing ability	15 808
Promotion of non-violent upbringing	4 438
Promotion of the minor's development	11 865

Reasons for and number of cases of intervention by youth welfare authorities in 1993

Reason for assistance by youth welfare authorities	Intervention by agreement	Intervention by court order
Educational problems	10 864	990
Economically unfavourable situation	10 660	1 109
Divorce, separation, illness	6 788	725
Child's disturbed behaviour	5 156	465
Person bringing up the child:		
Alcohol abuse	2 799	667
Homelessness	1 374	217
Ill-treatment	1 247	302
Drug abuse	571	94
Under-age child:		
Sexual abuse	449	103
Alcohol abuse	212	35
Drug abuse	178	10
Other	9 519	1 198

Minors in full custodial care on 31 December 1992
on the basis of an agreement

Disability status of the minor	Supervised minor	Foster family	Home	Other
Disabled				
Male	333	74	211	48
Female	214	58	128	28
Total	547	132	339	76
Not disabled				
Male	2 983	1 274	1 353	356
Female	2 326	1 190	794	342
Total	5 309	2 464	2 147	698
Female	3 316	1 348	1 564	404
Male	2 540	1 248	922	370
Total	5 856	2 596	2 486	774

Children in full custodial care on 31 December 1992
on the basis of a court order

Disability status of the minor	Supervised minor	Foster family	Home	Other
Disabled				
Male	120	59	42	19
Female	102	52	38	12
Total	222	111	80	31
Not disabled				
Male	1 571	895	412	264
Female	1 422	839	370	213
Total	2 993	1 734	782	477
Male	1 691	954	454	283
Female	1 524	891	408	225
Total	3 215	1 845	862	508

B. Parental responsibility for the development and rearing of a child (art. 18.2)

196. Matrimonial and family law is based on the principle of equality and partnership between spouses and parents. With regard to the relationship between parents and children in particular, special reference must be made to the provisions of section 137, paragraph 3 of the General Civil Code on the equality of the father and the mother and to the provisions of section 144 of the General Civil Code according to which parents must act by mutual agreement when exercising their rights and complying with their duties. If there is no agreement, it is above all the parent managing the household in which the child is looked after who is entitled and obliged to care for the child. Under section 140, paragraph 2 this care is considered a contribution to the child's maintenance. In addition to this, the caring parent must only contribute to the child's maintenance inasmuch as the other parent is unable to cover the child's needs in full or would have to contribute more than corresponds to his/her own standard of living.

197. The Kindschaftsrecht (Parent(s) and Child Act) provides for the possibility of transferring custody to persons other than the parents, especially to the grandparent(s), youth welfare authorities or foster parents. The rights of the parents of a legitimate child, however, (and of the mother of an illegitimate child) take precedence over the rights of other parties potentially entitled to custody of the child. Parental rights and duties may be revoked only if the parents are prevented from exercising custody or if their conduct puts the child's interests at risk.

198. Austrian law does not require couples who marry to be instructed about their personal responsibility for their children. Nevertheless, in order to make future parents more aware of their particular responsibility for the children resulting from their marriage, engaged couples, when getting married in a civil ceremony, can be given appropriate information (prepared by the Federal Ministry of the Environment, Youth and the Family) on legal relations within marriage, including joint parental responsibility for children, to be exercised by mutual agreement ("Guide to partnership in marriage"). The Federal Ministry of the Environment, Youth and the Family sends so-called "parents' letters" to all parents of younger children which give parents guidance and assistance in questions of upbringing; numerous public and non-profit institutions also offer training in parenting.

199. The Federal Ministry of Justice and the Federal Ministry of the Environment, Youth and the Family are at present carrying out a pilot scheme at two courts (Vienna Floridsdorf and Salzburg), entitled "Partner and family counselling in court, mediation and assistance for children whose parents are separating or divorcing" whose main aim is to enable couples intending to divorce or separate to arrive - on a voluntary basis - at a joint, responsible agreement about their children's future living conditions (apart from regulating any legal and economic concerns) and in particular to work out a form of exercising the respective parent's role which is acceptable to both parents and children. According to the professional criteria applied by the mediators, the children of parents making use of mediation are included in this process as directly as possible ("family mediation").

200. It is one of the principles of the *Familien- und Jugendwohlfahrtsrecht* (Law on Family and Youth Welfare) that the family is the natural environment in which to grow up and for a child's sound physical, mental and social development. It is in the first place the parents through whom children experience love, family security, support and the necessary protection and through whom essential values are conveyed to them. The parents' position is that of the guarantors of their children's protection and support. The rights of the child are in the first place safeguarded by the special responsibility of the parents, secondly by the family's support through other persons/parties qualified to care for children. Although parental upbringing is considered to be the best means to further a child's development, in cases where the family is not able to fulfil its protective and educational functions sufficiently or at all, society and its institutions take its place in a subsidiary function. Apart from safeguarding material basic needs, the State also provides an extensive system of aids which can be used either as prior support or subsequent care to compensate for the loss of individual or all functions of the family.

201. This State function is regulated in the *Jugendwohlfahrtsgesetz* (Youth Welfare Act) of 1989 (federal basic Act) as well as the youth welfare laws or youth welfare regulations of the "Länder" (implementing laws) and also the Kindschaftsrechtsänderungsgesetz (Parents and Child (Amendment) Act) of 1989. These law reforms largely changed the structure and function of public youth welfare from a strictly official to a service-orientated administrative institution. It is the task of youth welfare authorities to further the personal and social development of children up to the age of 19 by counselling parents, giving assistance and support with regard to care and parental upbringing, or to safeguard this through additional educational measures in cases of serious educational deficit.

202. This youth welfare function is exercised through various social services (sect. 12):

> Counselling services for children and their parents/guardians which focus on the implementation of non-violent upbringing and the protection of children from violence (for example, family counselling, child protection, crisis centres, emergency accommodation, etc.);
>
> Preventative and therapeutic assistance for children and their families (for example parent schools, family therapy and socio-educational family aid, etc.);
>
> Care assistance (for example home helps, child-minders, educational help, mother and child accommodation, day-care centres, experience-related educational projects, holiday schemes for children and/or parents in 1992 for 9,474 children and 381 families);
>
> Institutions for early diagnosis and treatment of children's behavioural problems (for example, early encouragement, socio-educational practice and experience courses, speech therapy, play therapy, etc.). These social services may be made use of by the general public on a voluntary basis and largely free of charge.

203. In 1993, the youth welfare authorities offered the following facilities: 12 mother and child homes, 23 mother and child flats, 69 flat-share projects, 467 child-care institutions, 27 institutions for socio-educational family aid, 44 parent-child centres and 30 other facilities (for example, crisis centres). These social services are not restricted to individual problems of upbringing but are available to children and their parents in all types of crisis situation affecting children; this applies particularly to cases where children are exposed to violence or to situations of conflict arising in the course of their parents' impending or actual divorce, or where the divorce has already taken place. Upon the occurrence of any problem situation with regard to the child's upbringing or any behavioural problems on the part of the child, its parents/guardians are encouraged to make use of these social counselling services as soon as possible. They are to be assisted by experts to recognize difficulties in bringing up the child and to tackle these problems with the help of competent socio-educational guidance or assistance.

204. Respect for family life requires the authorities not to interfere with the private lives of citizens without pressing cause (sect. 2 of the Youth Welfare Act). In fact, it happens more and more frequently that unnecessary invasion of the family's private sphere is refrained from and attempts are made by the public youth welfare authorities to offer counselling and support services for the family in the execution of its tasks concerning the care and upbringing of minors. Public youth welfare services are to be provided by appropriate staff members, whose further training must be ensured.

205. Placement of children in foster families, socio-educational common households (of people not from the same family), children's homes or children's villages is only considered if the family has failed to take appropriate care of the child. The youth welfare authorities are obliged to offer the parent(s) entrusted with the child's custody their help in safeguarding the rights of the child. The use of counselling services is voluntary and free of charge; a contribution towards costs may be asked for when more expensive social services are used (such as therapeutic aid, placing a child with a foster family, in a crisis home or caring for children in day-care centres or by child minders, or holiday schemes, etc.); this contribution cannot, however, be so high that it prevents the population from making use of the required social services.

206. The Youth Welfare Act of 1989 created an extensive range of social services, primarily with the aim of strengthening parents' ability to raise their children. At the same time, though, the majority of homes for children and adolescents whose welfare could no longer be guaranteed if they remained with their own families were closed. According to a preliminary assessment, this means that there is a trend towards an insufficient number of suitable institutions in which children at risk can be accommodated and cared for. This shortage would have to be overcome primarily by the establishment of more socio-educational common households (of people not from the same family).

207. According to youth welfare statistics, a total of 9,162 children were in full care on 31 December 1993; of these, 46 per cent lived with foster parents, 38 per cent in homes and 15 per cent in other establishments.

C. Recovery of maintenance for the child (art. 27)

208. In accordance with section 140 of the General Civil Code, it is the parents' duty to pay for the maintenance of the child. The duty to pay maintenance is the same for legitimate and illegitimate children or children from a marriage which ended by divorce. Both parents must "to the best of their ability contribute pro rata to meet the needs of the child as appropriate to their standard of living, taking into account the child's talents, abilities, inclinations and possibilities of development". This contribution may involve care of the children by the parent managing the household. The other parent's (who has no child-care responsibilities) contribution is to be made in the form of financial payments. The extent of maintenance payments depends, on the one hand, on the needs of the child, and, on the other, on the standard of living of the parents.

209. The needs of the child are determined by the child's age, its personal talents, abilities, inclinations and possibilities of development. Grandparents may be obliged to pay maintenance only if the child's parents themselves are not in a position to do so. A child is entitled to receive maintenance until such time as he/she is able to provide for him/herself.

210. The percentages used for the assessment of maintenance payments are fixed by the courts of first instance. The person responsible for maintenance must pay the following percentages of his/her average monthly net earnings:

For a child aged	Percent
0 - 6 years	16
6 - 10 years	18
10 - 15 years	20
15 + years	22

If that person has to care for several children or also for a wife without income, these percentages are reduced by two or three percentage points in each case.

211. The law does not make any provision as to how much pocket money parents ought to give their children. According to a study carried out in 1991 (IMAS-Austria: Kinder-ÖVA 1991 - Commentary. Linz 1991, 30 f), a child had on average S 279 per month in 1991 (S 126 pocket money plus S 153 extra).

212. Parents are generally obliged to enable their children to receive occupational/vocational training - including university training - which corresponds to their abilities and inclinations. The parents have a duty to continue maintaining the child throughout this training. The child in turn must pursue this training seriously and purposefully and produce acceptable results. Changing a course of studies once, for example, must be tolerated.

213. Maintenance for minors who are Austrian citizens or who are ordinarily resident in Austria is determined in non-litigious proceedings. Since maintenance proceedings can sometimes be lengthy, there is a possibility of "summary" proceedings: in these proceedings, preliminary maintenance is

determined without all the circumstances having to be meticulously examined. This should at least ensure basic living conditions for the child entitled to maintenance. Maintenance claims are enforceable through the bailiff. To support implementation of the child's maintenance claims, the child's legal representative may entrust the youth welfare officer with a mandate to determine and enforce the child's maintenance claims (sect. 212, para. 2 of the General Civil Code).

214. The *Unterhaltsvorschußgesetz* (Advance on Maintenance Act) of 1985 (Federal Law Gazette No. 451), which came into force on 1 November 1976, introduced a new legal instrument to safeguard maintenance of under-age children. The Act stipulates that the federal authorities (of Austria) must pay advances on the legal maintenance of (Austrian and stateless) minors if the child has its habitual residence in Austria and is an Austrian citizen, stateless or a refugee under the Convention. An advance on maintenance is granted to minors in cases where the parent responsible for maintenance is no longer living in the common household (in most cases, this is the father) and does not meet his/her legal obligations. It is a precondition that although the parent obliged to pay maintenance is basically able to comply with his/her duty to maintain the child, collection by means of a court order is not successful. The State will also grant the child an advance on maintenance in the special case where the parent liable to pay maintenance can either not be found or is serving a prison sentence of more than one month.

215. There is no right to an advance on maintenance if the child lives in a common household with the person liable to pay maintenance or is placed in a foster family, a children's home or other institution because of measures taken by the social services or for reasons of its full upbringing in accordance with public youth welfare law.

216. Persistent refusal to comply with the duty to pay maintenance may have consequences under criminal law (sect. 198 of the Penal Code): "Breach of obligation to provide maintenance"): it must be a gross breach of the obligation to provide maintenance which leads to actual or potential endangerment of the maintenance or upbringing of the entitled child. One may also render oneself liable to prosecution if there is a failure to pursue employment which would make compliance with one's duty possible. In 1992, the youth welfare authorities filed 3,758 complaints for breach of obligation to provide maintenance.

217. Austria is a party to the Convention of 26 June on asserting maintenance claims abroad and to the Hague Convention of 15 April 1958 on recognition and execution of decisions in the field of maintenance obligations towards children. Austria has also signed numerous bilateral enforcement treaties, most of which also permit enforcement of maintenance decisions and maintenance settlements. The *Auslandsunterhaltsgesetz* (Foreign Maintenance Act), Federal Law Gazette No. 160/1990, also facilitates the assertion of maintenance claims abroad for an under-age child if the child is living in Austria and the person liable to pay lives in a country with which a reciprocal agreement has been concluded, and vice versa. Reciprocal agreements exist with most of the federal states of the United States, with Australia and some Canadian provinces.

218. Legitimate, illegitimate and stepchildren who have lost one or both parents through death receive an orphan's pension to compensate for the maintenance payments. The right to an orphan's pension basically ends at the age of 18, but continues through further education at school, occupational training or a course of study. Should the orphaned child suffer from any mental or physical disability making him/her permanently unable to provide for him/herself, an orphan's pension may be granted for an unlimited period.

D. Separation from parents (art. 9)

219. If - for whatever reason - parents do not or no longer fulfil their duty to bring up the child, any child requiring protection is entitled to the special protection of the State. This protection is implemented by State agencies such as the courts and youth welfare authorities, which intervene if the special protection required by the child removed from its family environment should make this necessary; and they will provide for another suitable form of accommodation for the child.

220. A child's separation from its parents because of a risk to its well-being is regulated in greater detail in section 176 a and b of the General Civil Code as well as in the provisions of Länder law based on the Youth Welfare Act of 1989. Should parents' conduct put the child's interests at risk (sect. 176 and 176 a of the General Civil Code), there is a provision for intervention by the courts regarding the withdrawal or restriction of parental care. Such measures are generally subject to the provision that custody may only be restricted to the extent necessary for safeguarding the child's interest. This restriction again expresses the principle of family autonomy, i.e. the principle of "least possible interference". See also section 26 of the Youth Welfare Act 1989; for details see chapter VI, section B, above. Educational institutions restricting the freedom of children are not permissible in Austria and have therefore been closed.

221. Under section 215 of the General Civil Code, the youth welfare authorities must apply for the requisite court order to safeguard the interests of an under-age child with regard to custody. Should there be any imminent risk, they may take temporary measures under their mandate to ensure care and education. These measures remain effective until a decision is made by the courts, provided the required court order is applied for immediately, within a period of not more than eight days (sect. 215, para. 1). No matter who made the application, the court of guardianship must issue the necessary orders if the parents' conduct endangers the interests of the under-age child (sect. 176, para. 1). The child's removal from its present environment (and thus separation from the parents) may only be ordered if the interest of the child is at risk, if total removal from its present environment is necessary and placing the child with relatives or other suitable persons close to him/her is not possible. In such cases, the court must transfer custody to the youth welfare authority, either entirely or in part. The latter may in turn entrust a third party - such as a foster family - with the exercise of custody (sect. 176 a, General Civil Code).

222. Decisions in cases where the child's interest is at risk are made by the court of guardianship in so-called "non-litigious" proceedings, which

are instituted ex officio and based on the principle of simplicity and informality. The court must ascertain the relevant circumstances officially. It must give all parties - and in particular the child - an opportunity to state their position and be heard in court. Children over the age of 10 must be heard in any case. There is a right of appeal against the court's decision.

Summary of cases where full custodial rights were granted, as of 31 December 1993	
Total	9 162
Minors in foster families	4 241
(Foreign minors in foster families)	(333)
Minors placed in children's homes	2 475
Minors in other institutions	1 014

223. Due to the increase in divorce cases during the last decade, the number of children growing up with only one parent because of the parents' separation or divorce has increased steadily:

Number of divorce cases 1987-1994

	1987	1988	1989	1990	1991	1992	1993	1994
	14 839	14 924	15 488	16 282	16 391	16 286	16 299	16 928
Number of children affected by divorce								
< 6 years	4 806	4 915	4 937	5 135	5 059	5 084	4 983	5 103
< 10 years	7 622	7 951	8 061	8 489	8 451	8 565	8 487	8 793
< 14 years	9 780	10 157	10 308	10 840	10 966	11 225	11 397	11 725
< 19 years	12 760	12 743	12 855	13 488	13 427	13 780	13 926	14 498

224. If parents are divorced or if a child's parents live separately on a long-term basis, they may submit an agreement to the court, stating which one of them should in future have custody of the child. The court must approve this agreement if it is in the interests of the child. Should no agreement be reached within an appropriate period or should the agreement be contrary to the child's interests, the court must decide who should be awarded custody after an application is made by one parent. In all cases where the parent of a legitimate (or illegitimate) child is not entitled to custody of the under-age child, he or she still has the right of access to the child under

section 148, paragraph 1 of the General Civil Code. On application, the court must regulate these "visitation rights" in a manner appropriate to the child's interests. "Visitation rights" are enforceable through the courts.

225. If necessary, and in particular if the child's relationship with the parent with whom he/she is growing up would be disturbed intolerably through the exercise of visitation rights, exercise of such rights by the parent not entitled to custody must be prohibited entirely by the court. In principle, grandparents also enjoy visitation rights, although of course to a limited degree.

226. Experience shows that in some 9 out of 10 cases, custodial rights are awarded to the child's mother. A survey by the IMAS Institute in 1988 showed that the majority of divorced parents come to a mutual agreement regarding visitation rights for the parent without custody; for only a third of the parents is it necessary to have the right to personal contact between parent and child established by a court decision. The pattern of maintaining personal contact varies considerably. In 55 per cent of the cases, "visitation rights" are not governed by a strict timetable, only 29 per cent of parents living apart have regular contact with their children; 71 per cent of parents without custody therefore see their offspring irregularly (IMAS, 1988). The general trend is for the number of visits to decrease as time passes.

227. The extent of contact with the parent not awarded custody is shown by the following figures: the majority of fathers living apart from their children live farther away. Only 1 out 10 children under 15 years of age lives within 15 minutes' walking distance from the natural father (11 per cent); 38 per cent of fathers live half an hour's drive away; 22 per cent of children live up to one hour's drive away from their natural fathers; a further 12 per cent up to 6 hours by car and 17 per cent of fathers live even farther away.

228. As far as frequency of personal contact is concerned, 14 per cent of children under 15 years of age whose father does not live with them see him daily; a further 17 per cent have direct contact with him once a week; 21 per cent meet their natural father only once a month; 12 per cent see him at least once a year. Approximately one out of three children sees its natural father (not living with him/her) not even once a year, nor has any contact with him (31 per cent). In only 10 per cent of the cases, can mothers who do not live with their children be reached within a 15 minutes' walk. The majority of such mothers can be reached within 30 minutes by car (40 per cent) or within 30 to 60 minutes by car (31.2 per cent); 6.7 per cent of children concerned live between one and six hours by car away from their mothers. And at least 12 per cent of children live six or more hours by car away from their mothers.

229. In contrast to fathers not living with their children, the frequency of contact with mothers not living with their children is higher: 28.3 per cent of children see their natural mother on a daily basis, a further 16.5 per cent have contact at least once a week. Similar to the situation of fathers, the

percentage of children seeing their mother once a month is 21 per cent; 8.3 per cent of children under 15 years of age have contact with their mother at least once a year. Nearly one out of four children living apart from their natural mothers has rarely or never any contact with her.

230. Thirty-seven per cent of children between the ages of 6 and 13 know of their right to maintain a regular, personal relationship with the parent from whom he/she lives apart (for example after a divorce); the degree of such knowledge increases with the age of the child. Two thirds of adolescents claim knowledge of this right, girls being more aware of it than boys. Amongst the "adults" (18 and older) two thirds also know of this right, and this knowledge increases with the level of education. Here, too, such knowledge is more common among women (three out of four) than men (barely three out of five).

231. The importance of this right is stressed by almost three out of four of those over 18; one out of five considers it "rather important" and 5 per cent consider it unimportant. Half of the interviewees are of the opinion that in Austria this right is not taken into account sufficiently. At least three out of five adolescents (14 to 17) state that they would be able to object if their relationship with the parent living apart from them were restricted; one out of six does not share this view. Girls are convinced more often than boys that they would be able to object.

232. In Austria, there is the possibility of joint custody for divorced parents: divorced parents (with some restrictions) continue to live in a common household with the child. Should both apply for joint custody of their child(ren), the court must give its approval, unless this arrangement is to the disadvantage of the child(ren). If, however, there should be such serious differences of opinion between the parents that it is to be expected that a common household will not be maintained, or if they have only recently divorced, courts refrain in the interests of the child from issuing a joint custody order. In view of the requirement for the divorced parents to maintain a common household, joint custody plays rather an unimportant role in practice.

233. Following a parliamentary survey, the Federal Ministry of Justice and the Federal Ministry of the Environment, Youth and the Family have been conducting a pilot scheme at two courts since the autumn of 1994 entitled "Partner and family counselling in court - mediation - and assistance for children whose parents are separating or divorcing" whose main aim is the improvement of the child's situation in divorce proceedings. The aims of the project section "mediation" are to enable couples intending to divorce or separate to arrive - on a voluntary basis - at a joint, responsible agreement about their children's future living conditions (apart from regulating any legal and economic concerns) and in particular to work out a form of exercising the respective parent's role which is acceptable both to parents and children. According to professional criteria to be applied by the mediators, the children of parents making use of mediation are included as directly as possible in the mediation process (family mediation) by giving them an opportunity to speak for their own interests ("participation").

234. Over and above this, a child may be given further support in coping with a family crisis situation through the exchange of experiences with other children in the framework of group therapy. This therapy enables children in a group with other affected children to become aware of and express their own experiences, thoughts and feelings with regard to pending changes in their family situation. This exchange of experiences with other children is to give them an opportunity to learn how other children deal with a comparable family situation; through suggestions for joint approaches to solutions for difficult situations, the children are to be supported in their difficult task of understanding their changed position in the family and of accepting the new family situation.

235. In accordance with resolution E 156-NR XVIII. GP, quoted in chapter II above, this pilot scheme "Partner and family counselling in court, mediation and assistance for children whose parents are separating or divorcing" is evaluated on a scientific basis. Based on the results obtained in the course of scientific research accompanying this pilot project, legislative and organizational measures shall be proposed in order to utilize the ability of couples wanting to divorce or separate

> To solve the conflict with their partner in a responsible way; and
>
> To retain their parental responsibility in a way conducive to the well-being of the child.

In this connection, the Federal Government shall explore the possibility of establishing independent family court centres and intensify training measures for judges working in family courts.

E. Family reunification (art. 10)

236. The legal basis for family reunification of alien children with their parents resident in Austria is regulated by the "Aufenthaltsgesetz" (AufG (Residence Act), as amended by Federal Law Gazette No. 1995/351). The "Asylgesetz" (AsylG (Asylum Act), as amended by Federal Law Gazette No. 1994/610) and the "Fremdengesetz" (FrG (Aliens Act), as amended by Federal Law Gazette No. 1994/505) make provision for the maintenance of family unity of aliens already resident in Austria.

237. Not least as a result of the deliberations on the "Expert report on the Convention on the Rights of the Child" by the Austrian National Assembly and the subsequent resolution No. E 156 of 14 July 1994, in which the Federal Government was requested in the light of articles 9 and 10 CRC to take account of the principle of family unity to the greatest extent possible in the implementation of the Asylum Act, the Residency Act and the Aliens Act, the possibilities of family reunification were simplified considerably in comparison with the earlier legislation.

238. On the basis of the Residency Act (AufG, as amended by Federal Law Gazette No. 1995/351), which regulates the right of aliens to reside in Austria, certain quotas of the annually available residence permits are fixed for the quantitative control of immigration. There is a separate quota for the purpose of family reunification, within the scope of which residence

permits may be granted to the legitimate and illegitimate minor children and spouses of aliens who have been legally resident in Austria for at least two years. Within the scope of this quota, applicants for permits whose cases for family reunification appear to be particularly urgent, young children and relatives of persons who have been resident in Austria for a particularly long time, are given preferential treatment. For 1996, an overall quota of 18,480 permits was fixed, of which 10,520 permits were earmarked for "family reunification with aliens".

239. However, these quotas do not apply to

(i) The legitimate and illegitimate children and the spouses of Austrian citizens (as well as European Union and European Economic Area citizens); and

(ii) Minor children of legally resident aliens who were born in Austria and have been resident in Austria since birth.

For these groups of individuals, there are therefore no quantitative restrictions with regard to immigration for the purpose of family reunification.

240. Conversely, the principle of family unity also means that if an alien's residence permit is rendered invalid because of a residence ban or if the withdrawal of a residence permit is ordered by the authorities, for example, if the livelihood or decent accommodation in Austria is not guaranteed, this withdrawal shall also apply to the spouse and any minor legitimate or illegitimate children living in the same household (sect. 8, para. 2, of the Residence Act).

241. Under the Asylum Act (as amended by Federal Law Gazette No. 1994/610), the possibilities of family reunification are limited to allowing the residence and maintenance of family unity of an asylum seeker or refugee already in Austria, by granting asylum - on application - to the legitimate and illegitimate minor children and spouse of a refugee, provided that they too live in Austria (sect. 4). Furthermore, family reunification with the relatives of the refugee is only possible in compliance with the general provisions of the Aliens Act on entry into the country by aliens. Unaccompanied minor refugees living in Austria are not entitled to apply for family reunification or reunification with their parents under the Asylum Act, the Residence Act or the Aliens Act.

242. If an alien's residence permit is withdrawn in the course of a deportation proceeding or a residence ban is imposed, the protection of private and family life within the meaning of article 8 of the European Convention on Human Rights and the particular situation of his family must be taken into account. A residence ban must not be imposed on an alien if the effects on the life situation of the alien and his family are more serious than the reasons for imposing the ban. Furthermore, a ban must not be imposed if the alien would already have been entitled to Austrian citizenship (sects. 19 and 20 of the Aliens Act). This regulation is directed mainly at protecting from a residence ban "aliens of the second generation", who were

born and grew up in Austria, but who have not (yet) applied for Austrian citizenship for whatever reasons. However, this protective clause does not include persons who have been convicted of serious crimes.

F. Children deprived of their family environment

243. If at the time of birth legal representation is not incumbent upon either parent of a child born in Austria, the youth welfare officer becomes the legal guardian. If a foundling is found in Austria, the youth welfare officer also becomes his/her legal guardian (sect. 211 of the General Civil Code).

244. Should the child's well-being not be safeguarded if he/she remains in the family environment, placement with a foster family, a children's home or any other institution (for example a "children's village" or a common household run on socio-educational principles) may be considered ("complete education according to Youth Welfare Law"). In order not "to hospitalize" children through placement in homes, youth welfare authorities try to place children (above all babies and small children) with foster families. These measures may only be continued inasmuch as they are necessary to safeguard the child's well-being and lesser measures would not meet the objective. Placement in a children's home must therefore be changed to placement with a foster family whenever possible.

245. In 1989, the number of children under the age of 15 placed in institutions such as children's homes, common households (of people not from the same family) or with foster families or relatives totalled 3,067. Of these 3,067 children, on whose behalf the youth welfare authorities had to intervene, 372 lived with relatives, 1,615 with foster families, 1,008 in children's homes and 72 in common households or other forms of institution.

246. Since the child welfare authorities were reorganized in 1989, the number of "home requirements", i.e. child-rearing measures requiring placement of the child outside the family and made on the basis of a court order, have clearly decreased. Thus the number of children under 15 who lived in institutions such as children's homes, common households or with foster families or relatives in 1992 amounted to a total of 1,079; 592 lived with foster families, 317 in children's homes and 170 in other institutions, mainly common households run according to socio-educational principles.

G. Adoption

247. Under section 179 a, paragraph 1 of the General Civil Code, adoption is based on a written contract between the adopting party and the adopted child. This adoption contract requires the approval of the courts. In the case of adopted children who do not have the capacity to act for themselves, this contract is concluded through their legal representative, who does not require the consent of the courts to do so (para. 2). Adoption may only be granted by the courts if a relationship similar to that between natural parents and children exists or is to be established. The adoption must be conducive to the well-being of the child who does not have any power to act. Should the adopted child have such power (having come of age), the particular concern of the adopting party or the adopted child must be justified (sect. 180 a).

248. When granting permission for adoption, the court must examine the legal requirements for consent to an adoption contract and take into account all relevant facts of the case ex officio. Prior to making a decision, the court is obliged to hear every child who has reached the age of 5, the parents of a child having come of age, the foster parents or the person in charge of the home in which the child lives, as well as the youth welfare authorities (sect. 181 a, para. 1 of the General Civil Code). Permission for adoption may only be granted with the consent of the parents of the child to be adopted if under age, of the spouse of the adopting party and the spouse of the adoptee. In certain circumstances, the right of consent may no longer apply or, if refused, consent may be given by the courts (sect. 181).

249. Under section 26 of the Federal Act on International Private Law, Federal Law Gazette No. 304/1978, the preconditions for an adoption and for terminating an adoption must be assessed according to the personal status of the adopting person. If, according to the child's personal status, its consent or the consent of a third party to whom the child is related under family law is required, this Act also becomes applicable.

250. Arrangements for the adoption of a child in Austria are a matter for the youth welfare authorities. Under some regional youth welfare laws this task may also be entrusted to a recognized independent youth welfare authority. An absolute prerequisite for any adoption is the justified expectation that a relationship will be formed between the adopting party and the child, which is similar to the relationship between natural parents and their children (sect. 24, Youth Welfare Act 1989). Furthermore, regional youth welfare laws require that the best possible development and social integration of the child must be ensured.

251. Additional, stricter criteria have been stipulated by the regional youth welfare laws concerning the adoption of children abroad. For example, adoption abroad is only permissible if this is particularly or more conducive to the well-being of the child than an adoption in Austria, or if special circumstances justify such a step if, for example, the child's linguistic, religious and cultural affiliation must be taken into account, or if the child's well-being would otherwise be at risk. This provision meets the strict requirements of article 21 (b) of the Convention on the Rights of the Child. Only one adoption abroad took place in 1992. No remuneration may be agreed or accepted for mediation in this matter (sect. 24, para. 2, Youth Welfare Act 1989); any infringement of this requirement of non-remuneration in adoption proceedings is liable to prosecution (sect. 35, para. 3, No. 1, Youth Welfare Act 1989).

252. Austria ratified both the European Convention on the Adoption of Children of 24 April 1967 (Federal Law Gazette No. 314/1980) and the Hague Convention of 15 November 1965 concerning the jurisdiction of authorities, the law to be applied and the recognition of decisions concerning adoptions (Federal Law Gazette No. 581/1978). Within the framework of the Hague Conference on Private International Law, a special commission - in which representatives of third world countries, who supply most of the adopted children, took part - drew up a detailed adoption agreement. A diplomatic conference completed the agreement on the protection of children and

cooperation in the field of international adoption. The agreement was opened for signature on 29 May 1993. It has since come into force for Mexico, Romania, Sri Lanka and Cyprus.

Statistics on the adoption of minors (granted with final effect)

1990	1991	1992	1993	1994	1995
548	518	480	552	544	483

H. Illicit transfer and non-return

253. Austria is a party to the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction and the European Convention of 20 May 1980 on Recognition and Enforcement of Decisions Concerning Custody of Children and on Restoration of Custody of Children. Both are very effective instruments in combating illegal transfer and non-return of children.

254. By making specific actions concerning the relationship of an under-age child (up to the age of 19) with its parent/guardian a statutory offence, it is intended to safeguard not only the custodial rights but also to protect the under-age child him/herself: abduction of a minor from the authorized person's custody (sect. 195 of the Penal Code) and obstructing custodial measures ordered by the authorities are liable to prosecution (sect. 196 of the Penal Code).

255. The security forces (police) are obliged to assist in establishing the whereabouts of a minor if a request has been made under section 146 b of the General Civil Code (sect. 24, para. 1, No. 4 of the Sicherheitspolizeigesetz (Act on the Maintenance of Public Security)).

I. Abuse and neglect (art. 19), including physical and psychological recovery and social reintegration (art. 39)

256. Austria is one of the few countries in which the absolute prohibition of violence against children prevails in the entire legislation. In 1989, Parliament finally renounced any type of physical or psychological abuse of children as a means of education. The legal provision (sect. 146 a of the General Civil Code) is perfectly clear: "the application of violence and the infliction of physical or mental harm are unlawful".

257. By prohibiting the "infliction of mental pain", the legislator explicitly banned repressive education. Neither parents nor other legal guardians are now able to justify the physical "ill-treatment" of children - such as physical injury or the infliction of physical pain - by invoking their right to custody. Provided the application of force is not serious, violations of this ban are not immediately liable to punishment. However, according to the jurisdiction of the Supreme Court (OHG 24.6.1992, 1 Ob 573/92), violations of the ban on violence and/or corporal punishment as contained in section 146 a of the General Civil Code

are to be taken into account when assessing the legal relationship between children and parents, for example when custody is awarded (sect. 176 of the General Civil Code).

258. A study commissioned in 1991-1992 by the Federal Ministry of the Environment, Youth and the Family and other studies concerning violence within the family, and in particular a study entitled "Causes and consequences of violence against women and children" indicated the extent of violence against children within families: 67.5 per cent of mothers and 68.8 per cent of fathers categorically reject serious corporal punishment (beatings) as a means of education, 28.5 per cent of mothers and 26 per cent of fathers occasionally resort to violent means, and 4 per cent of mothers and 5.2 per cent of fathers frequently resort to stronger measures of violence in order to enforce their educational aims. There is a clear gender-specific difference in the use of violence against children: boys are beaten significantly more frequently than girls.

259. On the basis of the above-mentioned study, "Causes and consequences of violence against women and children", sponsored by the Federal Minister for Women's Issues, the Federal Chancellor's "Fund against violence" and the Jubilee Fund of the Austrian National Bank, specific information material was prepared on the topic "How to counteract violence against women and children". In addition to providing information about rights, about the possibilities for the victims of violence to obtain assistance and about their social environment, as well as for the professions confronted with violence, the focus on the causes and consequences of violence is intended to contribute towards reducing prejudice and sensitizing those affected and the professions dealing with violence against women and children.

260. Based on the experience of the professions concerned with violence against women and children, the Federal Minister for Women's Issues initiated the preparation of basic and advanced training seminars on the topics "Violence against women" and "Handling cases of sexual abuse of girls and boys in a professional way". These seminars are intended to provide a practical basis for specific advanced training courses for teachers, social workers, leisure time pedagogues, social pedagogues, kindergarten teachers, police officers and therapists. The aim is to improve interventions by these professions on behalf of victims of violence and to optimize interdisciplinary cooperation.

261. By bolstering the absolute prohibition of violence (sect. 146 a, General Civil Code) through the specific assistance tools of the Youth Welfare Act 1989 and the regional youth welfare laws, a decisive step was taken in the direction of enforcing non-violent education as a basic principle; in 1987, the Strafrechtsänderungsgesetz (Criminal Law Amendment Act) had already increased the punishment for the offence of abuse or neglect of children under 18 from two to three years' imprisonment.

262. Since children are entitled to a non-violent upbringing - above all if their parents do not meet their child-rearing obligations properly - specific contact services for parents and children were set up: child rearing counselling services in the Youth Welfare Departments, social services for

parents and children, child protection centres, the child helpline, and children's and adolescents' ombudsmen. Since the foundation of the first child protection centre in Linz in 1985, a further seven have been set up in Vienna, Graz, Salzburg, Innsbruck, St. Pölten, Klagenfurt and Wels, and project groups are preparing to set up further child protection centres in several of the larger cities.

263. In order to provide a first point of contact for children and adolescents who are at risk, the Federal Ministry of the Environment, Youth and the Family has set up a federal ombudsman for children and adolescents. This agency publicly propagates a child-friendly society, stands for the idea of non-violent education, and can be contacted by children, adolescents and their custodians who want to make suggestions and lodge complaints about alleged violations of children's and adolescents' rights. Using the so-called "red telephone", one can contact the agency from anywhere in Austria at local call rates. For children in need, there is by now a whole network of child lines: for example the Child Emergency Telephone, the Child Worries Telephone and the so-called "Kinderkummernummer" (for children in trouble). (See also chap. II, sect. 2.5, above.)

264. The combination of penal provisions with a clear deterrent effect and preventive interventions on the part of protection agencies should discourage any use of violence against others at the earliest possible time, and not merely serve as the reaction to violence which has already occurred. Preventive protection is one of the central tasks of the security forces. The police must intervene for example in cases where a person expects a dangerous attack on his/her physical safety (sect. 22, para. 2, Act on the Maintenance of Public Security). The security act's overriding principle is the protection of life and health, taking priority over any other object of legal protection (sect. 28, para. 1 of the Act on the Maintenance of Public Security). Training of the members of the public security services is of prime importance in this respect; they are increasingly taught to be sensitive to the situation of victims of violence in the family.

265. On the occasion of the International Year of the Family, Maria Rauch-Kallat, the former Austrian Federal Minister of the Environment, Youth and the Family, Johanna Dohnal, the former Federal Minister for Women's Issues, Dr. Nikolaus Michalek, the Federal Minister of Justice, and Dr. Franz Löschnak, the former Federal Minister of the Interior, started an initiative against violence in the family and against any kind of violence directed against children. These federal ministers accorded absolute priority to the protection of the physical safety of the socially and physically weaker members of the family over respect for private and family life, i.e. over the privacy of domestic life.

266. Since it has been established that the use of effective preventive measures to protect women exposed to violence can in most cases improve the situation of children who are themselves the victims of violence, strengthening the position of women, also indirectly but nevertheless noticeably, will in future be one of the core areas of an active security policy. Police intervention is directed against the person exercising violence and may lead to the removal of that person from the home. Children

who have been exposed to violence should receive appropriate counselling, immediate aid or long-term legal and social support appropriate to their particular situation, without any bureaucratic or other obstacles. For this purpose, the availability and accessibility of child protection centres and crisis centres, common households for children with special needs, emergency overnight accommodation and therapy places are being extended.

267. These legal measures - which have already reached the draft stage - should provide effective instruments against violence in the family. In order to sensitize the public and to unite the various institutions and aid services concerned with the problem of violence against children in their fight against violence within the family, an Anti-violence Campaign was launched in late 1992 and a "Platform against Violence in the Family" was set up in 1993. It is their task to create a network of existing institutions for the protection of children.

268. The central provision granting children protection from violence under criminal law is contained in section 92 of the Penal Code. This penal provision covers two groups, namely persons under 18 years of age and persons who are helpless owing to frailty, sickness or mental deficiency. Section 92 differentiates between two forms of offences. The first offence is the infliction of physical pain or mental suffering, physical pain usually being caused by injury but also by ill-treatment or the restriction of freedom; mental suffering can be inflicted by threats and verbal abuse or other humiliating treatment. The infliction of suffering can also take the form of acts of omission or negligence, for example neglecting to summon a doctor in due time.

269. The second offence is gross negligence of the obligation to provide care and assistance, thus causing considerable harm to the health or physical or mental development of the person with whose care one has been entrusted. There must be a conspicuous, flagrant incongruity, indicative of a character defect, between the undutiful conduct and the degree of care and assistance which can generally be expected in the specific circumstances.

270. The minimum sentence provided for both offences is a term of imprisonment of up to three years, which can be increased to up to five years if the act led to bodily harm with serious lasting effects. Prison terms of up to 10 years can be imposed if the act led to the death of the injured person. Anyone causing bodily injury to a child or damaging its health is liable to prosecution under section 83 of the Penal Code. Furthermore, any physical abuse of a child is liable to prosecution, even if the resulting bodily injury or damage to health was caused "only" by negligence.

271. Under Austrian law, the protection provided for under penal legislation of all persons who are the subject of legal protection applies first and foremost to children. Since children are in greater need of protection than adults, assaults on children (above all concerning their physical integrity and interference with their sexual integrity) entail a higher degree of criminal liability because of their greater social and ethical reprehensibility.

272. The following provisions of the Penal Code are specifically aimed at the protection of children:

Section 93: Overstraining of minor or younger persons or persons in need of care and consideration;

Section 101: Abduction of minors;

Section 195: Abduction of a minor from the custody of his/her parent/guardian;

Section 196: Obstruction of custodial measures ordered by the authorities;

Section 197: Abandonment of minors;

Section 198: Violation of duty to pay maintenance;

Section 199: Neglecting care, education or control;

Sections 206, 207, 208: Sexual intercourse with a minor, indecency with minors, moral corruption of persons under 16;

Section 209: Indecency between homosexual persons with persons under 18;

Section 212: Abuse of a position of authority;

Sections 213, 217: Procuration and trafficking of people;

Section 2 of the Pornography Act.

273. In Austria, some 500 reports are filed every year concerning violations of the legally protected sexual integrity of children and adolescents. The number of unrecorded cases is presumably several times higher. The above-mentioned offences are so-called "Offizialdelikte", i.e. offences which are prosecuted ex officio by the State. A child can also raise any claims he/she may have under private law against the offender as a private party to the criminal proceedings. The child will then be represented by his/her parents or another legal representative in the judicial proceedings.

274. In the case of any kind of violence against children, the youth welfare authorities are authorized not only to intervene and enforce the ban on violence but also to ensure by means of a close-knit network of advisory bodies and social services that children and adolescents exposed to violence are cared for in the best possible way both from a medical (for example by undergoing outpatient treatment) and also from a psychological and social point of view (for example by being looked after by one of the therapeutic services). Special psychological rehabilitation, for example, is made available by the Information Office for Psychotherapy of the Association of Viennese Psychotherapists, which provides general information on psychotherapy and also arranges for free therapy. If children or adolescents make use of this therapy, the costs are borne by the health insurance companies.

275. A child or adolescent victim of a criminal offence may in principle claim damages from the perpetrator through the courts for all damage or injury suffered. If the child is unable to afford the cost of legal counsel, it is entitled to legal assistance free of charge in order to assert his/her claims under civil law. Apart from private indemnification, a victim may also avail him/herself of relevant State assistance such as those forms of assistance available under the provisions of the Sozialversicherungsrecht (Social Security Law) (plus supplementary statutes), the Youth Welfare Act 1989, the Verbrechensopfergesetz 1972 (Act on Assistance to Crime Victims) and the Behindertengesetze der Länder (Disability Acts of the Länder). Victims of a criminal offence who have suffered serious bodily injury or damage to health receive, for example, the necessary therapy treatment, orthopaedic care, and the benefits of medical, professional and social rehabilitation (medical support, drugs, remedial help, hospital care, stays in convalescent and rest homes, fitting of sanitary installations suitable for the disabled, adaptation of motor vehicles for use by the disabled, professional retraining, etc.).

276. If a child or adolescent has suffered any injury in the course of military training in the Austrian Army, the Heeresversorgungsgesetz (Military Pensions Act) of 1964 settles any claim for compensation. Accordingly, the injured person is entitled to medical, professional and social rehabilitation measures and cash benefits (disability pension and family allowance for children up to the age of 18 or to the end of their schooling or professional training).

277. Based on the awareness that violence against children takes a variety of forms and constitutes a great social concern, the Austrian Parliament requested the Federal Government (in resolution E 156 NR XVIII.GP, Pt. 4) to

> Intensify the initiatives already in progress to prevent violence and to render assistance in cases of violence against children;
>
> Take all appropriate steps within its powers, including the preparation of bills;
>
> Ensure that suitable facilities for the protection of children are established all over Austria (for example, mobile task forces, centres for the protection of children, helplines, provision of therapy for victims and offenders);
>
> Establish "parent schools" to inform parents of methods and models of non-violent education;
>
> Intensify measures against the sexual exploitation of children, including international cooperation, to combat "sex tourism".

J. Periodic review of placement (art. 25)

278. Placement of physically or mentally handicapped children and adolescents as defined in article 25 is provided for in the Tuberkulosegesetz (Tuberculosis Act) and the Unterbringungsgesetz (Placement Act), the latter concerning placement of the mentally ill in hospitals or psychiatric units.

279. Occasionally, 1/ medical treatment or care of physically or mentally ill children is arranged by the youth welfare authorities, either on the basis of an agreement with the parent or guardian (sect. 29 of the Youth Welfare Act of 1989) or on the basis of a court order (sect. 176 a of the General Civil Code). Such a custodial measure under youth welfare law must be amended if this is required in the interests of the minor, or cancelled if it is no longer to his/her benefit (sect. 31, para. 3 of the Youth Welfare Act 1989); this presupposes a regular review of each of these measures, regardless of whether they serve medical or other purposes.

280. In the - rather rare - case that it should be impossible for a physically or mentally disabled child to deal with its concerns to the required extent with the support of its family or the help of private or public welfare institutions for the disabled, the courts must decide on the appointment of a curator or guardian ad litem. An expert opinion on the physical or mental disability is to be obtained prior to such a decision being taken; the court is furthermore obliged to form a personal opinion of the disabled person and hear his/her views. Should the court consider it necessary, a curator or guardian ad litem is appointed for the disabled child. Detailed reasons must be given in this decision as to which illness or disability was the basis for such an appointment becoming necessary. When choosing a curator or guardian ad litem, the court must take the personal requirements of the physically or mentally disabled person into account. The function of curator or guardian should therefore be exercised in the first place by a person close to the child, for example a suitable relative or an acquaintance the child trusts; if this cannot be done, the Vereinssachwalterschaft association shall propose someone who will carry out this task either on a full-time or a voluntary basis.

281. With regard to matters such as the administration of property, representation before the authorities or social and medical care, the handicapped child has a right to be consulted by the curator or guardian ad litem. He/she must be informed in due time of any important measures intended to be taken and may express an opinion on all matters which must be taken into account by the curator or guardian when making a decision. The courts must check at appropriate intervals whether it is in the child's interests to amend the content of the curatorship or even cancel it.

282. The conditions as to permissibility, restriction of personal liberty and treatment of the mentally ill (also mentally ill children) in a psychiatric hospital are laid down in the Unterbringungsgesetz (Placement Act) (Federal Law Gazette No. 1990/155). A child or adolescent may only be placed in a psychiatric hospital if he/she suffers from a mental illness. However, this does not apply to a child or adolescent who is merely mentally disabled or

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1/ Of the minors placed in full care, only 1,475 suffered from a disability (within the meaning of the respective Disability Acts of the Länder) in 1993; however, it needs to be pointed out that generally it is not the child's disability that is decisive for the youth welfare measure to be taken but the parent's inability to raise the child.

suffers from states of excitement or other abnormal behaviour but who does not suffer from any mental disorder at the same time. Furthermore, placement is permissible only if, in connection with a mental ailment, there is a danger to the child's own or other people's lives or health and this danger cannot be avoided by lesser alternative means (for example, treatment as an outpatient or being cared for by one of the psycho-social services).

283. The Placement Act basically provides for two types of placement: firstly, placement upon application and, secondly, placement against the wish of the patient concerned. In accordance with section 5, paragraph 2 of the Placement Act, a minor may only be placed (in an institution) upon his/her wish if this has been requested by the parents or guardians - if the minor has reached the age of majority, the request may also be made by him/her. The consent of the legal representative is also required. Placement on request may only last 6 weeks, and upon renewed request for no longer than a total of 10 weeks (sect. 7 of the Placement Act). An extension of the placement beyond this period is not permissible.

284. Placement without a request having been made may first of all only be declared permissible for three months (sect. 26, para. 3). Unless such a placement is cancelled with the expiry of the initially ordered period, the courts must again - and, if necessary, several times - decide on the permissibility of such a placement. The period permissible for any such further placement may in no case exceed six months. Only in medically justified exceptions may any further placement beyond one year be declared permissible for one year at most (sect. 30, paras. 1 and 2). A regular review of the duration of the placement is thus ensured.

285. Apart from individual provisions concerning restrictions of the rights of the mentally ill, the Placement Act also contains rules on medical treatment during placement. A patient able to understand the reason for and the importance of treatment may express his intentions according to this understanding and may not be treated against his/her wishes. Furthermore, special therapies, including operations, may only be carried out upon written consent (sect. 36, para. 1). The patient's age is not taken into account.

286. If the patient does not understand the reason for and the importance of any treatment or is not able to express his intentions according to this understanding, he/she may - if a minor - not be treated against the wishes of his/her legal representative or parent/guardian. Special therapies, including operations, may only be carried out with the written consent of the legal representative or parent/guardian. These rules on permissibility do not apply, however, if there is any imminent danger.

287. In general, contact with the outside world, whether through personal visits, telephone calls or letters - letters must not be opened by the institution's staff - must not be restricted. Contact with particular persons may only be restricted to the extent necessary to ensure the ill child's or adolescent's well-being.

VII. HEALTH AND WELFARE

A. Survival and development (art. 6.2)

288. Austria has developed an extensive programme for (expectant) mothers, fathers and children. The "Mutterschutzgesetz" (Maternity Protection Act) protects pregnant women and mothers in employment from dismissal by their employer during pregnancy and for a period of four months after delivery protection from being given notice (dismissal protection). If the mother or father of the child takes maternity/paternity leave, or part time employment in the sense of the Maternity Protection Act (MSchG), this protection is extended until four weeks after the end of the leave.

289. Furthermore, the social protection of mother and child is guaranteed through a ban on work before and after delivery, income maintenance and job security. During pregnancy, employed women must not be allocated heavy work or work that may be hazardous to their health. For a period of eight weeks before the expected delivery and eight weeks after delivery, or up to a maximum period of 16 weeks in the case of premature or multiple births and delivery by caesarean section, the ban on work is absolute. If the life or health of mother or child is endangered, this protection applies from the moment the risk is ascertained by a doctor. If the mother returns to work while still nursing the child, the employer must grant the mother the time required for nursing the child, without loss of wages. If the life or health of mother or child is threatened, there is an absolute ban on the mother working provided the risk is certified by a doctor of the Labour Inspectorate or a local government medical officer.

290. Under the Amendment to the Maternity Protection Act (Federal Law Gazette No. 1995/434), possible sources of danger in the workplace for the health or safety of expectant or nursing mothers must be eliminated by the employer. Suitable facilities must be provided for expectant and nursing mothers at their places of work or on building sites to enable them to lie down and rest. The employer is under the obligation to eliminate any danger to the safety and health of expectant and nursing mothers or any adverse effects on pregnancy or nursing by changing the conditions of work (sects. 2 a and 2 b of the Maternity Protection Act, as amended by Federal Law Gazette No. 1995/434).

291. To ensure that expectant mothers do not suffer any loss in earnings during the period of maternity protection and ban on work (maternity protection), they are entitled to a nursing mothers' benefit equivalent to the average net earnings over the last 13 weeks, or to continued pay from the employer as compensation for the loss in earnings for the duration of maternity protection (8 weeks before and after delivery; up to 16 weeks after delivery in the case of premature or multiple births and caesarean deliveries).

292. After the period of maternity protection, the mother or the father of the child or both parents alternately are entitled to parental leave - with full maternity pay. At most, parental leave may last until the child's

second birthday, the parents being allowed to alternate once (Parental Leave Act, Federal Law Gazette No. 1989/651, as amended by Federal Law Gazette No. 1994/665). Moreover, there is also the possibility of part-time employment for the parents instead of maternity leave after the period of maternity protection, if either parent and his/her employer agrees on part-time employment with a reduction by at least two-fifths of normal working hours.

293. If both parents make use of part-time employment at the same time, they may, on application, receive maternity pay until the child's second birthday. If only one parent makes use of this possibility, he/she may work part-time until the child's fourth birthday and receive the part-time maternity pay. If the parent takes full maternity leave up to the child's first birthday, one parent may work part-time and receive part-time maternity pay up to the child's third birthday instead of a second year of full maternity leave. In such case, the amount of maternity pay depends on the reduction in working hours, but is never more than half the normal maternity pay. During maternity leave or part-time employment, the mother or father receives maternity pay under the unemployment insurance scheme.

294. Part-time employment until the child reaches the age of four is permitted only if no parental leave was taken during the child's first and second years (sect. 15 c, para. 2 of the Maternity Protection Act). If parental leave is taken only during the child's first year, the employed mother is entitled to work part-time until the child reaches the age of two provided that the father, too, works part-time concurrently, or until the child reaches the age of three if the employed mother or both parents, alternately, work part-time (sect. 15 c, para. 3).

295. In order to receive maternity pay, a woman/man under 25 must have been employed and liable to pay unemployment insurance contributions for a period of only 20 weeks. A woman/man over 25, however, requires 52 weeks of employment for the first child and 26 weeks for every further child. The maternity pay is a lump sum that is independent of previous income. Married parents or parents living together with a sufficient joint income receive the standard rate (1996: S 5,565 per month). Single mothers/fathers, on the one hand, and parents who are married or living together without or with a very low joint income, on the other, receive 150 per cent of the standard rate (1996: S 8,190).

296. On 1 January 1996, a new regulation came into force in respect of eligibility for higher maternity payments. The extra allowance will only be granted to a single parent (usually the mother) if the other parent (usually the father) is identified. Married couples or cohabiting couples will receive this extra allowance only if the spouse's or partner's income does not exceed a certain amount. The allowance granted to a single mother must be repaid by the identified father of the child. If an allowance is granted to parents who are married or cohabiting, this extra allowance must be repaid by them. The obligation of repayment arises when there is an income of more than S 140,000 per annum.

297. The following groups of mothers receive a part-time work allowance (until the child's second birthday):

(i) Those who do not meet the eligibility requirements (i.e. who were employed under the compulsory unemployment insurance scheme for less than 20, 26 or 52 weeks);

(ii) Self-employed women who have mandatory health insurance coverage;

(iii) Farmers who have compulsory health insurance coverage as the managers of the business or as family members assisting in the business.

298. Farmer's wives and self-employed women must have had business assistance - a service provided for under the health insurance scheme for eight weeks prior to and eight weeks after delivery (during the ban on work for expectant mothers). This part-time work allowance is S 2,760 (for married couples) and S 4,170 for single parents.

299. Single mothers, and married mothers or mothers living with a partner with a low or no family income, who are again dependent on their own wage income after their maternity leave and who do not return to work due to a lack of child-care facilities for children of this age group are entitled to special social welfare so they may look after their child themselves until the child's third birthday.

300. Maternity pay is re-evaluated every year. The total costs for maternity pay rose nominally by 486 per cent between 1979 and 1991, which was due not only to adjustment of the rate but also to the extension of maternity leave from one to two years (or up to four years in the case of part-time maternity leave) and the extremely high acceptance of this measure.

301. The pension reform which came into force in July 1993 contains the following provisions for taking account of the time spent looking after children for pension insurance. A maximum of 48 months (four years) per child starting with the birth of the last child are counted as substitute years spent on child rearing. Child rearing periods which overlap because there are several children are only counted once.

302. These extended child-rearing periods are designed as substitute periods, i.e. if they are within the time frame they justify receipt of a pension in combination with contribution periods resulting from employment. However, regardless of the time when they were acquired, they increase an existing pension right. If the birth took place after 1 January 1956, it is also possible to gain pension rights on the basis of child care and rearing in combination with contribution periods (at least one month). However, in order for this to be possible, there must be a total of 25 insurance years.

303. In principle, it is also possible to split these periods spent on rearing and caring for a child and which count towards a pension between both parents.

304. The nursing leave allows employed men and women to take up to one week of leave per year (or two weeks for nursing a sick child aged up to 12) - with full pay - to nurse dependants living in the same household (especially children, a spouse, a partner or parents) or if the employed child-minder falls ill.

305. In accordance with plans of the Austrian Federal Government it is envisaged that while the right under labour law to take parental leave until the child reaches the age of two will continue to exist in the future, maternity pay is to be disbursed only until the child reaches the age of two if parental leave is split between the child's father and mother.

B. Disabled children (art. 23)

306. In the past decade, the Austrian Federal Government has taken a number of legal and administrative measures based on a rehabilitation concept to integrate the disabled in everyday life (disabled persons concept). To allow the disabled to participate in social life in the community, special efforts are being made towards the social integration of disabled children. In particular, the integration of disabled children and healthy children is being promoted at a very early age. Special care and educational facilities to meet the needs of disabled children (e.g. special kindergartens or special schools) are being provided, and special financial assistance is being granted for the additional expenses incurred as a result of the disability of a child. For example, a higher family allowance is granted for children who are considerably disabled mentally or physically: in addition to the regular family allowance of S 1,400, they receive S 1,650. The expenses incurred as a result of the disability of the child may be claimed in full as tax-reducing extraordinary expenses or as a lump sum of S 3,600 per month.

307. Disabled children - like healthy children - are automatically insured with a working parent under the mandatory health insurance scheme, the costs of medical treatment being covered by the insurance; they also receive rehabilitation free of charge. The travelling expenses and the costs of a person who accompanys the disabled child can be borne by the insurance institution if they exceed the parents' financial resources. If the care of a disabled child living in the same household requires the full working capacity of a parent, this parent may insure her/himself with the pension insurance fund for the time spent looking after the child. The Family Burden Equalization Fund bears such costs.

308. The Bundespflegegeldgesetz (Nursing Allowance Act) which came into force on 1 July 1993 provides for the payment of a nursing allowance to people who look after a disabled child that is older than three. Persons requiring care and attention are entitled to a nursing allowance if they receive the necessary care (e.g. help when dressing, taking medicine, meals, etc.) from relatives and are not dependent on institutional care. For children over three requiring constant care exceeding 50 hours per month due to a mental or physical disability or due to a sensory disability, a graded nursing allowance is granted depending on the extent of the disability and the average amount of

309. Medical experience in the field of care for disabled persons has shown that serious disabilites require considerable extra care already in the case of children under the age of three compared to "normal" children of the same age. This fact was taken into account by incorporating a "hardship clause" in the draft amendment of the Nursing Allowance Act under which the age limit of three years may be disregarded in specific cases to avoid hardship.

Grade 1	Grade 2	Grade 3	Grade 4	Grade 5	Grade 6	Grade 7
S 2,635	S 3,688	S 5,690	S 8,535	S 11,591	S 15,806	S 21,074

310. The Bundesbehindertengesetz (Disabled Persons Act) is the basis for the coordination of rehabilitation measures and selective counselling, care and support for the disabled, in order to ensure an optimum of social integration. The Social Service of the Federal Ministry of Labour and Social Affairs serves as an information centre for all issues relevant to disability. Mobile counselling teams for children and adolescents have been established to look after disabled children and adolescents, or children with retarded or impaired development. These teams organize counselling days at the regional centres and also make home visits, if necessary. The teams consist of paediatricians, child psychologists and social workers who offer medical check-ups for high-risk infants, medical and psychological diagnoses, as well as educational and social counselling. In addition to counselling and support for both the affected children and their families, the counselling teams also ensure collaboration with special counselling and care institutions (e.g. early encouragement, therapeutic kindergartens, etc.).

311. In order to provide special development incentives for disabled children and to counteract their disability, integrated kindergartens, day centres and primary school classes have been established in addition to special kindergartens - mainly in the larger towns. Attendance at a general preparatory school or preparatory group, where teachers spend more of their time with them, helps children with retarded development to achieve the maturity required for school in order to create almost equal school starting opportunities. There, children in need of special education are provided with specific encouragement.

312. The integration of disabled and non-disabled children has been tried within the framework of various school pilot experiments since 1988. In these schemes, the disabled children were given the necessary special attention but participated in normal instruction to the greatest possible extent and could thus be integrated into the class community. With the introduction of integrative schooling of disabled and healthy children after the amendment of a number of school laws in 1993, an important educational and political goal was achieved: namely, to secure the right of disabled children to education and to participation in social life. School experiments have shown that disabled children can be educated in normal primary schools if encouragement measures are taken concurrently. Thus, the parents of a disabled child now have the choice of sending their disabled child to primary school with special

313. The specific school type is selected after a pupil-oriented diagnosis of the specific therapeutic requirements has been made. The educational mandate of the primary schools has thus been expanded to include special pedagogic objectives for disabled children. If these special pedagogic requirements cannot be fulfilled by the class teacher alone, an additional, specially trained teacher is called in. In order to develop special pedagogic support further, several special schools are organized as special pedagogical centres, depending on the regional situation.

314. The special school system should only be a possibility for taking the special needs of disabled children into account if they cannot keep up in primary school. The different types of special schools are designed to suit various kinds of disability: the general special school (for difficult children or children with learning difficulties), special schools for the mentally handicapped, for children with speech disorders, for children with partial deafness, for the deaf, for the partially blind, for the blind, schools for difficult children, schools for the mentally handicapped, for children with multiple disabilities, as well as hospital schools.

315. If absolute incapacity to attend school has been diagnosed, it is necessary - with regard to the basic right to education - to verify whether the child can be integrated in a school class or whether it should be supported by special measures after a reasonable period of observation.

316. Disabled adolescents who have completed compulsory education should always attend higher school - disability permitting - together with normal healthy adolescents if they have the necessary aptitude and if the local conditions are suitable (no structural barriers).

317. Measures for vocational choice and vocational rehabilitation are discussed together with the disabled adolescent and introduced in order to promote the obtaining of a job or apprenticeship. Integration into working life is supported by allowances for apprenticeship, training or retraining, job search, trial jobs, vocational preparation and job training. Disabled children can complete an apprenticeship in a training shop in conjunction with vocational school or, if necessary, in special institutions for the physically disabled or sensorily disabled. Moreover, disabled adolescents are trained for later jobs in training shops. In order to allow disabled adolescents to integrate in gainful employment, the Behinderteneinstellungsgesetz (Disabled Employment Act) promotes the creation and maintenance of training and work places for disabled persons. Larger businesses with more than a specified number of employees are obliged to employ a certain number of disabled persons; if this so-called "mandatory number" is not fulfilled, compensation must be paid (sect. 9 of the Act). The amount of compensation to be paid depends on the economic loss the employer would incur if employing a disabled person. On the other hand, businesses that employ more than the mandatory number of disabled persons receive a premium. An additional premium is granted for the training of disabled adolescents.

319. With a "disability pass", disabled persons may also enjoy various privileges (reduced fares on public transport, reductions for museums, theatres, public baths, etc.), persons with a permanent walking disability are favoured by fiscal law (tax allowance) and under the highway code (parking in no-parking zones, sect. 29 b of the Highway Code) to allow them to move as freely as possible. This same objective is also pursued by special construction standards for public buildings, traffic areas and public transport.

320. In order to make up for disadvantages at work due to a disability, training and retraining as well as trial jobs are offered within the scope of "special programmes", and, moreover, training positions and jobs are created and maintained by job grants under the Disabled Employment Act (e.g. for the adaptation of rooms and sanitary facilities, reconstruction of facilities and machinery). Vocational rehabilitation possibilities (such as job choice, try-out jobs, job training, etc.) and the special forms of "protected work" in companies under the Disabled Employment Act are aimed at the professional reintegration of juvenile crime victims in the free labour market.

321. If disabled adolescents cannot find work in the free market even after all these possibilities have been exhausted, they may still find work in "protected workshops". The disabled persons employed there have an opportunity to develop or regain their working capacity in order to find work in the free market and, in addition, they receive the necessary medical, social and psychological care. If the vocational integration of a disabled person is unlikely, the available skills are maintained and developed as far as possible in day-care centres and institutions with accommodation facilities. Work assistants employed by private associations for the disabled look after disabled adolescents in the search for and maintenance of jobs, and try to solve any problems that may arise through communication with the family, the employer and the authorities.

322. In Austria, there are a number of institutions that specialize in the integration and reintegration of disabled children. In particular, the university hospitals and a number of other hospitals and clinics provide suitable diagnostic and therapeutic facilities.

C. Health and health services (art. 24)

323. The ever important health objective of reducing the rate of infant and child mortality is guaranteed by an extensive preventive health-care system. The prime condition for the success of therapeutic measures ("early encouragement") is the earliest possible detection of a disability or development disorder, so that possible health hazards for the unborn child, the infant or the small child can be detected and remedied at an early stage. To ensure that these services are used as early as possible and the necessary medical intervention can be carried out, an incentive system, the so-called "mother-child pass" (a medical examination programme) was created to get parents to make use of these possibilities - even without any obvious reason.

checks including two laboratory tests (blood group, red blood or haemoglobin count, rubella, toxoplasmosis and syphilis serology, hepatitis B test) and eight post-natal checks including an orthopaedic examination, an otorhinolaryngological examination and an ophthalmic examination. In addition, two prenatal ultrasound checks, two ultrasound checks and a second ophthalmic examination of the child may be carried out. The examinations may be carried out either by a general practitioner or by specialists, and are conducted in the offices of registered doctors, clinics and child-welfare centres. All of these examinations are free of charge.

325. Approximately 96 per cent of all mothers make use of the examinations in the mother-child pass, not least because of the fact that if all specified examinations are carried out, a birth grant totalling S 15,000 (including the special benefit) is paid. On presentation of confirmation that the relevant examinations have been carried out it is paid in three instalments: after delivery, after the child's first birthday, and after the child's second birthday. After the child's fourth birthday, a final special benefit is paid if the last two check-ups are carried out. The success of this measure showed immediately after the introduction of the mother-child pass in 1974: at that time, the infant mortality rate was still 23.5 per cent for every 1,000 live births, whereas in the following years it dropped by two thirds. In 1992, only 7.5 and in 1994 only 6.1 of 1,000 live-born children died within the first year.

Development of birth rates between 1989 and 1995

1989	1990	1991	1992	1993	1994	1995
88,759	90,454	94,629	95,302	95,227	92,415	88,669

Infant mortality rate 1974-1993 per 1,000 live births

1974-23.5	1979-14.7	1984-11.4	1990-7.8
1975-20.5	1980-14.3	1985-11.2	1991-7.5
1976-18.2	1981-12.7	1986-10.3	1992-7.5
1977-16.8	1982-12.8	1987- 9.8	1993-6.5
1978-15.0	1983-11.9	1988- 8.1	1994-6.3
		1989- 8.3	1995-5.4

326. In 1995, 88,669 children were born. The infant mortality rate was 5.4 per 1,000 live births.

327. The mother-child pass examination programme ensures intensive health care for expectant mothers and children up to the age of four, provided by registered physicians and child-welfare centres. Moreover, an extensive range

328. Basically, preventive vaccination is organized on a voluntary basis in Austria. However, appropriate recommendations for general vaccination schedules are printed in the mother-child pass. The following vaccinations are recommended:

A 1:	3, 4, 5 months (4, 5 months if without pertussis)	Diphtheria-pertussis-tetanus (DPT), may also be without pertussis;
A 2:	after 3 months	Haemophilus influenzae b;
A 3:	after 4 months	Polio oral;
A 4:	after 14 months	First measles-mumps-rubella vaccine;
A 5:	15-18 months	Diphtheria-pertussis-tetanus (DPT) booster; if no basic DPT immunization: only diphtheria-tetanus booster;
A 6:	7 years	Polio oral booster, diphtheria-tetanus booster with diphtheria toxoid in reduced antigen dose (Td), second measles-mumps-rubella (MMR) vaccination;
A 7:	13 years	Rubella vaccination for girls;
A 8:	14-15 years	Boosters (e.g. polio oral, diphtheria-tetanus booster with diphtheria toxoid in reduced antigen dose (Td).

329. The vaccines against tuberculosis, diphtheria-pertussis-tetanus, polio, and measles-mumps-rubella are provided free of charge. Public vaccinations are carried out in public health centres, child-welfare centres, schools, and by doctors commissioned by the Public Health Board. Within the scope of liability for vaccination damage, the Government covers any damage to health caused by a vaccination recommended in the mother-child pass or ordered by the border health officers or recommended by the Federal Ministry of Health (vaccinations against diphtheria, tetanus, whooping cough, polio, measles, mumps, rubella, Central European encephalitis, Haemophilus influenzae) with respect to all costs of medical treatment, for drugs and medicines, for orthopaedic care and for care and treatment in hospitals or sanatoriums.

330. The last incidence of polio in Austria was registered in 1980. It affected a child that had not been vaccinated and had imported the infection from abroad. The last incidence of diphtheria in a child occurred in 1985. In 1983, 89 cases of whooping cough were registered; in 1992 the number of cases was 138. Cases of measles, mumps and tetanus are not subject to registration under the Epidemiegesetz (Epidemics Act), which is why no data are available. According to the data for tuberculosis in childhood provided by the tuberculosis welfare centres, there were no cases of tuberculosis among children aged 0-4 between 1983 and 1992. In 1984, 1987, and 1990

331. Austria provides nationwide hospital care. Section 18 of the Krankenanstaltengesetz (Hospitals Act) requires the Länder to ensure hospital care for persons requiring in-patient treatment. In terms of hospital bed numbers per inhabitant, Austria is the leader in Europe, a fact which results in a preference for in-patient treatment. With the introduction of medical home care, a major step was taken by the Austrian health system to enable sick persons, and particularly children, to be treated in semi-stationary, out-patients' or mobile facilities, or even at home.

332. In the field of health-care promotion, measures for schoolchildren are accorded priority. Schoolchildren and apprentices of all ages are examined annually by a school physician (mandatory health check-up), further medical examinations may only be carried out with the pupil's consent. The main emphasis is being placed on measures in the following areas: diet, exercise, smoking, drugs, AIDS and, increasingly, psycho-social health. In addition to medical care, the Kinder-Aidshilfe, a non-profit organization for the care of HIV-positive children, provides information and supports HIV-positive children, their parents and relatives, for example, if there are difficulties regarding kindergarten or school enrolment. Austria also participates in the European Network of Healthy Schools, a joint project of the World Health Organization (WHO), the European Union and the European Council, as well as in the international WHO survey "Health attitude of schoolchildren".

333. In Austrian schools, a health development programme has been developed and special teaching aids are provided for daily exercise at school. Within the scope of the campaign "exercise school", school physicians and Physical Education teachers are responsible for the early detection of bad posture and impending defects of posture in pupils (screening), and for remedying them through physical exercise. In order to reduce physical stress and to avoid psychosomatic symptoms in pupils, the Medical Service of the Federal Ministry has launched an information campaign "Stress, no thanks!" in schools. To enhance awareness with regard to nicotine consumption, a nationwide campaign on the problem, "Smoking in school?", was carried out in schools. In the fight against drugs, "Teaching materials on the drug issue" for the eighth grade and up, as well as an information brochure "Drugs and drug abuse" have been provided for pupils, parents and teachers.

334. In the Austrian school system, sex education is a principle of instruction. For teachers, a training programme for the use of "Materials on sex education" has been developed. In order to study the acceptance of these materials, a survey, "Efficiency and effectiveness of sex education in Austrian schools", taking HIV-AIDS prevention into account, was carried out, and a further specific package of measures for AIDS prevention, "AIDS information in school" was implemented in the schools.

335. In the 1990 government programme, the government parties resolved to launch an extensive sex education scheme for young people, because the education of young people was regarded as insufficient. "In order to prevent unwanted pregnancy and, as a result, abortions, which are neither socially

336. The information booklet "Balloons in your body - love, sex and tenderness" is the contribution of the Federal Ministry of the Environment, Youth and the Family towards educating young people on sex issues. Based on a pilot project on sex education carried out in Vienna and Lower Austria in 1990/91, the model "Working Group: Parents-Pupils-Teachers as Partners in Sex Education" was developed and tested. The Federal Ministry of Education and Cultural Affairs and the Federal Ministry of the Environment, Youth and the Family agreed to continue the project after the school year 1994/95 in order to ensure the implementation and coordination of the model cooperation project in all of the Länder. Within the framework of this model project, parents, pupils and teachers (of different subjects) are offered an opportunity in five meetings to discuss issues of sex education and to cooperate in the development of a sex education project for schools.

337. In Austria, all forms of contraceptives are available from doctors and pharmacies. Some, such as condoms and sprays, are available without prescription, others, such as the pill or IUDs, are available only after medical examination and on prescription. The abortion pill RU 486 is not licensed in Austria. The most common form of contraception is still the contraceptive pill. With increasing AIDS awareness, however, the use of condoms is propagated, and free condoms are handed out to specific high-risk groups. The correct use of contraceptives should be taught to adolescents. For this purpose, special sex education and materials are available in schools.

338. For family planning matters, numerous licensed physicians and a nationwide network of 291 public family counselling centres are available in Austria (1994), the public sector covering part of their costs (payroll costs up to a certain maximum amount). The minimum requirements in terms of staff are one physician plus one social worker or a marriage and family counsellor. In addition, lawyers, psychologists, teachers, sociologists, psychiatrists and specially trained family planning counsellors may also offer counselling services. Parent counselling is carried out by licensed physicians, as well as in the context of child-welfare centres and parent schools. The licensed physicians and child-welfare centres provide the parents with information about behavioural measures that are beneficial to the child's health. In addition, there is a network of about 30 to 40 women's counselling centres in Austria, which are generally operated by private groups.

339. In Austria, minimum quality standards for foodstuffs are laid down by strict food laws, and numerous environmental regulations and the use of modern technology guarantee clean drinking water.

340. In Austria, there are no ancient customs or rituals that are detrimental to the health of children.

Child safety in road traffic

341. In view of the large number of accidents, the safety of children on the

dangers to which children are exposed on the roads. For example, the principle of trust does not apply to children on the roads, because children cannot yet assess the dangers of road traffic properly: other road users can not trust a child to follow the rules of road traffic and behave correctly.

342. Because children often cannot assess road traffic situations properly, small children in particular must not be allowed on the roads unattended, but should be trained to behave correctly on the roads by their parents. Above all, children must never ride along the footpath or pavement of a road unattended on roller skates, scooters or other toy vehicles. The more child-oriented provisions introduced under the 19th amendment to the highway code on 1 October 1994 give children an absolute right of way in certain situations: in addition to general consideration for children on the roads, a driver must always allow children, alone or in groups, to cross the street without obstructing or endangering them: a vehicle must stop if necessary to allow unobstructed and safe crossing. Children and adult pedestrians have an absolute right of way on all pedestrian crossings as soon as they indicate their intention to cross the street.

343. The so-called "traffic reduction concept", i.e. the establishment of 30 km/h speed limits in the whole or parts of the town area as a measure of general traffic safety, is often of vital importance for children. For example, in Vienna alone the number of pedestrians killed in road accidents dropped from 81 in 1983 to 35 in 1993, and the number of pedestrians injured dropped from 2,154 in 1983 to 1,638 in 1993. After the successful experiment of a general speed limit of 30 km/h was carried out in the entire city of Graz, all municipalities have been allowed to establish 30 km/h speed limit zones according to their traffic policy requirements.

344. Playing on the street is not permitted - except in specially marked residential streets. Children may only play, roller skate or ride toy vehicles on footpaths and pavements if traffic is not dangerous and other pedestrians are not jeopardized or obstructed (e.g. in residential streets, in so-called "traffic reduced zones" or other quiet areas). Children under 12 may only cycle when accompanied by adults. After taking a cycle test and acquiring a cycle permit, children over 10 may also cycle alone. Carrying a passenger on the cycle is not permitted until the age of 16.

345. Owing to the high number of cyclists killed and injured in road accidents, the Austrian Road Safety Board, together with the automobile associations, the Federal Ministry of Health and the Austrian Broadcasting Company, have developed a multiphase safety campaign for cyclists, particularly for children. Although it is not mandatory, the "Helmi" campaign recommends wearing a helmet; "Helmi" is presented to children in a special children's television programme as an ideal road user. To give municipalities an incentive to establish suitable road conditions for cyclists, the most cyclist-friendly municipality is awarded a prize every year. In order to increase the safety of cyclists, the marked "cycle crossings" on roads were given the same pr

346. Motorized cycles (motor-assisted bicycles, scooters, mopeds) may be driven at the age of 16 without a test, and, after passing a test, adolescents over 16 may also obtain a licence for light motorcycles. A licence for motorcycles and cars may not be acquired until the age of 18 and requires a driving test. Helmets must be worn by all drivers and pillion riders on motor-assisted bicycles, mopeds, motor scooters, light motorcycles and motorcycles. The driver of a car and all passengers must use safety belts, and special safety equipment is mandatory for children. Children under 12 may only sit in the rear of the car, unless there is a special child's seat fixed on the front seat. Children under 10 are not allowed as passengers on motorized cycles and motorcycles; children under 8 are only allowed as passengers on motorized cycles if a suitable child's seat is used.

347. Although it is known that moped, motorcycle and car drivers under the influence of alcohol cause about 2,702 accidents per year in Austria (in 1995, a total of 593 so-called "disco accidents" with 61 dead and 1,007 injured, mainly young people, was recorded), in which over 100 people are killed, the Federal Government has not been able to decide on reducing the alcohol limit (currently 0.8 per mille) for drivers. At least the population is being made aware of the risks of drunk driving by "Don't drink and drive!" campaign.

348. In order to protect children (and adults) from the health hazards of air pollution, a nationwide warning system was established under the Smogalarmgesetz (Smog Alert Act). Since it is to be feared that the health hazard for people all over the world, but especially for children, has increased with the ozone loss in the stratosphere, legislative steps have been taken in Austria to warn the population of the ozone risk (Ozongesetz (Ozone Act)), and parents are advised via the media not to allow children out of doors without protection during the critical time (noon - 4 p.m.) on high-risk days. Moreover, folders and posters telling the "story of the sun" have been prepared and distributed to schoolchildren at the initiative of Austrian dermatologists and the Krebshilfe (Cancer Aid Society). The dermatology departments of the university hospitals and specialized hospitals offer information days for the population, with the possibility of having a free melanoma check. At the political level, Austria has worked hard towards banning the ozone-destructive CFC technology both at home and internationally - not without success.

D. Social security and child-care services and facilities (arts. 26 and 18.3)

349. Austria is a signatory to Convention No. 102 of the International Labour Organization on minimum standards of social security (Federal Law Gazette No. 33/1970) and has a social insurance system under which approximately 99 per cent of the Austrian population have either full health insurance coverage or are insured with a family member free of charge. Children as the dependants of insured persons have full health insurance coverage. If the mother/father has health insurance coverage (as a self-employed or employed

This coverage can be extended until the age of 27 if they receive vocational training or are in full-time education. If children live in the household of grandparents, they may be insured with them. The recipients of social welfare and their children enjoy free health insurance coverage. For orphans, health insurance coverage is granted within the framework of the orphan's pension. Children who cannot earn their own income because of illness or disability, i.e. who are unable to work, remain insured with their parent for an unlimited time. The insured child may receive any medical treatment from a general practitioner, specialist or hospital, as well as medicine and other medical aids at the expense of the insurance.

350. If none of the above cases applies, there is the possibility of voluntary insurance coverage under the Health Insurance Scheme on payment of appropriate contributions (1996: between S 448.80 and S 3,100.80 per month).

351. Schoolchildren and students are insured against the consequences of accidents in connection with school or university education (e.g. on the way to school, on school or university premises, at school events or when acting as "school safety patrol") under a school and student accident insurance scheme. This insurance scheme covers the costs of medical treatment, medicine, treatment aids, medical rehabilitation and therapeutic aids (such as crutches, wheel chairs, etc.). If the working capacity of the child is reduced by at least 20 per cent as the result of such an accident and this condition lasts longer than three months after the accident, the child is entitled to a one-time payment of a "disability benefit".

352. Disability benefits are staggered in fixed amounts according to the age of the insured and the degree to which working capacity is reduced. If, at the likely end of schooling, working capacity is still reduced by at least 50 per cent, a "disability pension" is granted as a continuous payment.

353. On the death of one or both parents, the claim to maintenance is replaced by a social insurance benefit. If the death of one or both parents was caused by a work-related accident or occupational disease, the child is entitled to an orphan's allowance, in addition to that and in all other cases of the death of one or both parents to an orphan's pension, provided that the insured parent had been insured for a specified minimum period. Although this monthly payment cannot make up for the child's pain and sorrow over the loss of the parent, the insurance does compensate for the maintenance payments by the deceased parent. The orphan's pension for children having lost one parent amounts to 24 per cent, for children having lost both parents to 36 per cent, of the pension due to the deceased.

354. Apprentices and (young) employees must be insured by their employer (i.e. health, accident and pension insurance), including unemployment insurance if they receive more than a specified minimum income.

Child-care services and facilities

355. The right to a kindergarten place for every child of working parents is not currently laid down in the kindergarten laws of the Länder. However, by developing the kindergarten system, it is being attempted to provide as many kindergarten places as possible within the framework of the limited financial

means available for this purpose. Childcare facilities such as kindergartens, day centres and day nurseries are provided primarily at the local level by individual municipalities or by a union of municipalities. In addition, childcare services may also be established and provided by suitable private persons or legally recognized churches or religious communities. Public child-care services - which are set up in response to concrete demand - are open to everyone; private facilities only receive public support if they are also open to everyone. Various kindergarten and day centre laws, such as the Upper Austrian kindergarten and day centre law, take the right of the mentally or physically disabled child to integrative special care and assistance into account.

356. According to a survey conducted in 1992/93, there are 316 day nurseries (207 public), 4,084 kindergartens (3,040 public) and 554 day centres (347 public) in Austria, responsible for a total of 226,563 children.

Number of kindergartens/number of children looked after					
1989/1990	1990/1991	1991/1992	1992/1993	1993/1994	1994/1995
3 876	3 915	3 983	4 084	4 212	4 378
184 027	185 247	187 031	192 719	199 928	210 940

Number of day centres/number of children looked after					
1989/1990	1990/1991	1991/1992	1992/1993	1993/1994	1994/1995
497	514	541	554	577	614
25 092	25 550	25 971	27 093	27 740	28 721

Number of day nurseries/number of children looked after					
1989/1990	1990/1991	1991/1992	1992/1993	1993/1994	1994/1995
285	296	293	316	397	374
6 696	6 617	6 392	6 751	7 110	7 627

357. The care of children under three in day nurseries has little tradition. Day nurseries are hardly made use of in Austria, which is due, on the one hand, to the low number of such facilities and, on the other, to the generous maternity leave for mothers and fathers, who may avail themselves of the two years' full (or four years part-time) paid maternity leave for looking after an infant. Only 0.1 per cent of children under one and 2.2 per cent of one to two-year-olds are looked after in day nurseries; 5 per cent of two to three-year-olds are looked after either in a day nursery or kindergarten.

358. In the scheduling of opening hours and holidays of child-care services there is a consistent lack of consideration for parents with children. With regard to opening hours, there are clear regional differences. In Vienna, 93 per cent of kindergartens are open all day, in one Land only 5.7 per cent, and in another only 2.7 per cent of the kindergartens. As a result of the closing times of kindergartens, working parents must make a host of private arrangements (e.g. support from grandparents, baby-sitter, day-care mother, etc.) to ensure that their child is looked after all day.

359. Since the number of single parents and "core families" without grandparents or close relatives to help out in emergencies is increasing, the demand for family assistants is constantly rising. Family assistants help out in unexpected emergencies and exceptional circumstances, for example they help the mother after the birth of a child by supervising the older children, or they take on the housework in case of illness. An alternative to institutional care that is very much preferred, particularly in rural areas, is the "day-care mother". She usually looks after one or more children aged from infancy upwards, either all day or half-day. This form of day care is offered by the child welfare authorities, social self-help organizations, and private persons and organizations.

360. There are individual cases of so-called "self-organized children's groups", which are a hybrid form of kindergarten and day-care mother. Such groups consist of a small number of children and ensure intensive individual support for the children concerned as well as particularly strong involvement of the parents who (may) exert a significant influence on the group's daily activities and the pedagogic principles applied.

361. The share of schoolchildren that are looked after institutionally outside school is significantly low. Whereas 6.3 per cent of seven to eight year-olds are looked after in day centres and all-day schools, this share drops with increasing age and is only 1 per cent among the 14 to 15-year-olds. All in all, only 3 per cent of all 6 to 15-year-olds attend a day centre and 1.5 per cent to an all-day school. The regional and urban/rural differences in terms of supply are also significant. In Austria, children usually attend school only in the mornings; only about 10 per cent of all schoolchildren attend an all-day school.

362. The fact that the proportion of schoolchildren who are looked after institutionally in the afternoon is significantly low is the result of, among other things, the lack of available places in day-care centres.

363. With the 1993 reform of regular school education, the ongoing school experiments concerning all-day school forms up to the eighth grade were integrated into the school system. Currently, these all-day school forms are not offered very frequently and are optional. The children's parents are required to pay a graded contribution, depending on social criteria, to the cost of meals and supervision and the leisure activities of the children looked after all day. Daily supervision - except on Saturdays and Sundays - is offered by state schools until 6 p.m.; all other schools are only required to remain open until 4 p.m.

364. Even if there is general political agreement that a higher care rate must be achieved, the concrete assumptions of the responsible politicians as to the actual need for kindergarten places differ. Owing to the urgent need to establish more child-care services, concrete plans have been drawn up in various Länder (for example, Upper Austria has projected a further expansion of the total of 679 public and private kindergartens). Awareness of the partial deficit is embodied in resolution E 156 NR XVIII. GP, Pt. 4., in accordance with which a need-oriented, nationwide expansion of qualified child-care services oriented towards the needs of working parents and their children is to be ensured by political, legislative, fiscal and administrative measures at the national and regional levels.

365. In complying with this resolution the Austrian Federal Government has, in its working agreement for the XIXth legislative period, resolved to launch an action programme to harmonize the work of parents with children and child-care services: more qualified part-time job opportunities, expansion of qualified child-care facilities (kindergartens, nurseries, day-care mothers and fathers, day-care groups) with appropriate all-day opening hours and socially graded fees. Moreover the Government agreed to provide S 600 million in assistance to the Länder for expanding all types of child-care facilities.

E. Standard of living (art. 27, 1-3)

366. By international standards, Austria has an extensive and fairly effective system of family support. According to a calculation by the OECD, the "well developed, generous family support system in Austria" has the third highest level among the OECD countries. In terms of direct transfer payments, which amount to 17 per cent of the average gross income of an industrial worker, the highest family transfers within the entire OECD region are paid in Austria.

367. However, in terms of fiscal support for children, which amounts to 3.7 per cent of the mean gross income of an industrial worker, Austria was still behind the average of the OECD countries in the early 1990s (Belgium: 11.7 per cent and Germany: 9.4 per cent). The tax allowance for children of 3.75 per cent of the gross monthly income, that has been in effect since 1993, has presumably improved Austria's position with regard to child-related tax allowances. According to a comparative calculation by the Central Statistical Office (1994), Austrian families ultimately receive 92.4 per cent of their gross income, on average. Between 1985 and 1993, income growth of an average family with two children (net and adjusted for inflation) averaged 18.1 per cent. Even if overall family support is generous in Austria, it does not cover all the costs for the care, upbringing, education, leisure, etc. of children.

368. The central instrument of the current system of direct payments to parents with children is the Familienlastenausgleichsgesetz (Family Burden Equalization Act) under which the mother, as the parent who generally keeps the home, has a primary claim to family allowance. A claim from the child itself is provided for only if the child is a full orphan or most of its maintenance is not paid by the parents. The family allowance is granted for children of foreign workers, if a worker is legally employed in Austria or has had his/her permanent residence there for at least five years. There are

special provisions for EEA (EU) citizens. Recognized refugees and stateless persons are considered equal to Austrians with regard to claiming the family allowance.

369. Basically, the maximum period for which the family allowance is granted is up to the person's 27th birthday (in connection with vocational training). This age limit does not apply to considerably disabled children who will probably never be able to work; their claim is not subject to any time limit. The family allowance rate is graded according to age. For children under 10, the basic rate amounts to S 1,300 per month. From the start of the calendar year in which the child reaches the age of 10, the family allowance increases to S 1,550 per month, from the start of the calendar month in which the child reaches 19 to S 1,850 per month (age supplement). For considerably disabled children there is an S 1,650 supplement to the family allowance described above (higher family allowance). Between 1979 and 1991, the family allowance rose nominally by 69 per cent.

370. Most Länder also offer a "family supplement", especially for families with many children, so that the financial burden of parents with more than one child is eased and one parent can stay at home to look after the children during the time in which this supplement is paid. In Vorarlberg, for example, 66 per cent of all families receive a supplement amounting to between S 3,414 and S 4,279 per month.

371. The birth grant - the claim to which is linked to special medical care for expectant mothers, infants and small children ("mother-child pass") - primarily pursues health objectives. The first instalment of the birth grant (S 2,000 without the mother-child pass examinations) is paid out when the child is born. A claim to payment of the birth grant and a special benefit (a total of S 15,000) arises when proof has been provided that the regular medical examinations of the expectant mother and the child, as required under the mother child pass, have been carried out. The higher first payment of the birth grant, S 5,000, is paid one week after the child's birth (without the Mother Child Pass examinations, or, when the child does not survive its first week, only S 2,000 are paid), the second instalment of S 5,000 is paid on the child's first birthday, and the third instalment of S 3,000 is paid on the child's second birthday. On the child's fourth birthday, a final special payment of S 2,000 is made.

372. The central family-motivated and child-oriented form of tax allowance is the child allowance. Together with the family allowance, a fixed "child allowance" (graded according to the number of children) is paid. This allowance amounts to S 350 for the first child, S 525 for the second child, and S 700 for every further child per month. In addition, a parent who does not live in the same household as the child and who pays maintenance for the child and does not receive family allowance is entitled to a maintenance allowance equivalent to the child allowance for every child for whom he/she pays maintenance.

373. Despite this relatively generous system, by international standards, of child-oriented transfer payments, a large number of children in Austria are living on the edge of poverty, according to a study carried out in May 1994 by

the Federal Ministry of Labour and Social Affairs entitled "Armutsgefährdung in Österreich". Anyone whose per capita income is lower than S 4,800 is considered as "poor" or "on the edge of poverty". In the group of single-income households, 10 per cent of all couples with one child have to make do with less than S 14,400 per month, 28 per cent of all couples with two children with less than S 19,200, and 46 per cent of all couples with three children with less than S 24,000. Among the double-income households, 2 per cent of all couples with one child, 5 per cent of all couples with two children, and 20 per cent of all couples with three children are living on the edge of poverty.

VIII. EDUCATION, LEISURE AND CULTURAL ACTIVITIES

A. Education (art. 28)

374. Under Article 2 of the Protocol to the Convention on the Protection of Human Rights and Fundamental Freedoms of 20 March 1952 (Federal Law Gazette 210/1958), which has the ranking of law in Austria, "No person shall be denied the right to education". In Austria, all school and education facilities, from primary school to university, are free of charge. When granting the "right to education" and fulfilling the obligations it has assumed in the field of upbringing and education, the State must take into account the parents' right to ensure that the child is reared and educated in accordance with their own religious and ideological values.

375. Compulsory education is governed by the Schulpflichtgesetz (Compulsory Education Act). Under this law, compulsory education commences on 1 September following a child's sixth birthday and lasts for nine school years. Children who are not yet of school age must be admitted, at the request of their parents or persons responsible for their upbringing, to first grade at the beginning of the school year if they reach the age of six before the end of the current calender year and are "mature enough" for school. If a school-age child is not "mature enough" for school, it has the opportunity to attend preparatory school instead. Adolescents in apprenticeship or other forms of vocational training must attend vocational school in addition to vocational training (compulsory vocational education; compulsory agricultural and forestry education).

376. General access to schools is guaranteed under the Federal Constitution (art. 14, para. 6) and the Schulorganisationsgesetz (School Organization Act, sect. 4, para. 1) under which public schools are open to everyone, regardless of birth, sex, race, social background, class, language or religion. The same applies to kindergartens, day-care centres and student hostels. Exemption from school fees is laid down in section 5 of the School Organization Act and in section 14 of the Pflichtschulerhaltungsgrundsatzgesetz (Compulsory School Maintenance Act): every child is entitled to attend compulsory general and vocational schools, intermediate and higher schools, and institutes for the training of educators and teachers in accordance with their interests and abilities. Public school education is free of charge.

377. In cases of need, the Schülerbeihilfengesetz (School Grants Act) grants pupils of low-income parents financial support (school and boarding grants) in order to allow them to attend school beyond the age of compulsory

education, and to make boarding easier for them. In order to offset the costs incurred by parents in raising and sending their children to school, the State takes over all costs of school transport for distances of more than 2 kilometres (no limit for disabled students) by granting a transport allowance or free season tickets for pupils and apprentices, and by providing the necessary textbooks for pupils attending a public or quasi-public compulsory school or a secondary or higher school in Austria as regular students. This is regulated under the Familienlastenausgleichsgesetz (Family Burden Equalization Act). Owing to the enormous cost of these State services, a 10 per cent contribution to be paid by parents was introduced in the framework of the cost-cutting measures adopted by the Government in 1995 ("austerity package").

378. (Free) access to universities is guaranteed under the Allgemeines Hochschulstudiengesetz (General University Studies Act), under which every Austrian citizen (foreigners according to the places available) is entitled to enrol at an Austrian university provided he/she fulfils the educational requirements. In cases of need, the Studienförderungsgesetz 1983 (Students Support Act) provides financial support to students whose parents have a low income or are poor.

379. The obligation to provide educational and vocational guidance is fulfilled by section 3 of the School Organization Act. Pupils and parents must be informed about the tasks and requirements of the various school types, and particularly in the fourth and eighth grades, as well as before graduation from a type of school, advice should be given about recommended further education, depending on the interests and abilities of the child. A pedagogical and psychological service, called "Schulpsychologie-Bildungsberatung", is offered by the federal school authorities in the Länder (regional and district school boards) to assist anyone involved in the education and upbringing of pupils of all school types on issues of vocational choice, decisions regarding school enrolment and school change. The responsibilities of the pedagogical and psychological service also include cooperation with other counselling services, such as the labour exchange, etc., and providing information through publications, as well as working together with the pupils and educational counsellors at secondary schools and grammar schools. In secondary schools and grammar schools, the optional subjects "vocational orientation and educational information" and "professional and working life orientation" contribute towards promoting character formation and clarifying future walks of life.

380. The obligation to attend lessons and obey school rules is directed towards the child itself. Guardians must act only as the representatives of pupils who do not have the capacity to act themselves, and conscientiously fulfil those obligations arising from the children's school attendance. Pupils may absent themselves from lessons only if they are justifiably prevented from attending, as in case of illness or other extraordinary circumstances. Last but not least, a broad range of subjects and educational principles should also provide an incentive for regular school attendance.

381. The teaching staff must not use any educational measures that would injure the human dignity of the children, such as corporal punishment,

insulting remarks or collective punishment, in order to maintain discipline (sect. 47, para. 3 of the School Education Act). Desirable and permissible educational measures are positive acknowledgement of performance, requests to change behaviour, or reprimands. A child may be transferred to a different class for educational reasons or in order to maintain discipline. If the child does not amend its undisciplined behaviour, the school conference may threaten expulsion. A child may be expelled - only by the authorities - in the following cases:

If it grossly neglects to fulfil its duties (collaboration, integration into the community, punctual and regular attendance);

If educational methods have failed;

If its behaviour is a threat to the morals, physical safety or property of other children.

382. In order for children with behavioural or educational difficulties to remain integrated in normal school, they are provided with the opportunity to discuss their problems with members of the pedogogical and psychological service and to overcome their difficulties with his/her help. The psychologoical school service deals with three areas: the individual (pupil, parent, teacher); the individual subsystems (family, classmates, friends, school) and the overall system (school system, society). The three basic objectives pursued are prevention, intervention and rehabilitation, and the three modes for implementing these objectives are counselling, accompanying assistance and treatment. In the field of counselling, available services include communication aid, information aid and assistance in recognizing one´s own strengths and weaknesses (diagnostics), in clarifying and articulating problems and in developing plans for the future. A similarly comprehensive range of concrete services is also available in the fields of accompanying assistance and treatment. Some 30,000 pupils, as many parents and about 10,000 teachers make use of such services per year, on a voluntary, confidential, unbureaucratic basis and free of charge.

383. The Austrian school system promotes international cooperation in the field of education by organizing various school events, for example exchanges with other countries. The OECD/CERI project "Environment and school initiatives", which was initiated by the Austrian school administration in 1985, is being implemented through the establishment of an environmental information network and through local counselling and training opportunities. Within the framework of this scheme, an evaluation of environmental education and environmental educational policy in Austria was carried out in 1992. The project will continue with a third phase in 1995/96.

384. In order to promote "German as a foreign language", Austria offers intensive advanced education courses (e.g. in 1992, a three-week symposium "America Latina-Austria") at international language fairs and within the framework of multilateral cooperation for students and teachers of German from all over the world. Since the opening up of the borders with our eastern neighbours, Austria has, at the request of the local education authorities, undertaken to support the initiated educational reforms within the framework of cooperative projects and by sending pedagogical counsellors. Moreover, it

has been possible to support financially the refurbishment of individual schools (e.g. a music school in Shkoder, Albania) through donations from Austrian schools and the Austrian school administration. Austria also participates in the CDCC projects "Teacher bursaries scheme" and "Language learning for European citizenship", and the EuryDICE project, as well as in OECD educational activities. In order to develop educational partnerships with Eastern and Central European countries further, school partnerships, pupil and class exchange activities, and bilateral language visits are being supported.

385. The wide range of subjects offered by Austrian schools ensures that the various interests and talents of the children can be developed. Although the school system is uniform in principle, the Austrian school system offers a wide range of different types and forms of general and vocational school, structured according to age and maturity on the one hand, and the different talents of the children, their aims in life and career-wise on the other hand (sect. 3 of the School Organization Act). In order to guarantee children as much freedom of choice with regard to school and education as possible, these various school types and forms are matched in terms of the ability to change from one to another. The schools are classified:

> According to curriculum into (a) general schools, (b) vocational schools and (c) institutes for the training of educators and teachers;
>
> According to level into (a) compulsory schools, (b) secondary schools, (c) higher schools and (d) academies.

386. The various mental and physical skills of the children are furthered through a differentiated range of subjects: compulsory subjects, alternative compulsory subjects, compulsory practical courses, support tuition, optional subjects and optional practical courses. In addition, the possibility of implementing curricula for individual schools within an established framework autonomously, also ensures additional differentiation. The subject "physical education" is part of the curriculum. In addition there are various schools with an emphasis on sports; there are also schools that focus on music and creativity. In implementation of the Government's "austerity plan", the range of optional subjects and optional practical courses offered at schools has been reduced, and a financial contribution towards the costs of school books is to be introduced.

B. Aims of education (art. 29)

387. The aims of education of the Austrian school system are laid down in the School Organization Act (sect. 2), according to which the tasks of school are:

> To foster the development of the talents and potential abilities of young persons in accordance with ethical, religious and social values and the appreciation of that which is true, good and beautiful by giving them an education corresponding to their respective stages of development and to their respective courses of studies;
>
> To give young people the knowledge and skills required for their future lives and occupations;

To train them to acquire knowledge on their own initiative;

To train young people to become healthy, capable, conscientious and responsible members of society and citizens of the democratic and federal Republic of Austria;

To encourage them to develop independent judgement and social understanding, and to be open-minded to the philosophy and political thinking of others;

To enable young people to participate in the economic and cultural life of Austria, of Europe and of the world;

To enable them to make their contribution, in love of freedom and peace, to the common task of mankind.

388. The school reform of 1993 allows disabled and non-disabled primary schoolchildren to be taught together in all schools and not just in those participating in the pilot project. (For further details see chap. VII, sect. B, above.)

389. The manifold educational duties of school cannot be allocated to any one single subject, but can only be fulfilled in a multidisciplinary way. The curriculum of schools providing general education includes the following educational duties (so-called educational principles): health education, reading, media education, music, political education (including peace education), sex education, speech education, environmental protection, kerb drills, economics (saving and consumer education). The working group on environmental education, an independent working group set up within the framework of the Austrian Society for Nature and Environmental Protection, has carried out a number of projects in the field of environmental education - financed equally by the Federal Ministry of Education and Cultural Affairs and the Federal Ministry of the Environment. The project "Environment - school - community" shows how effective cooperation can be achieved in projects at local levels and provides practical examples. The "Ecological work experience" project is also directed towards environmental education in and outside schools. The campaign "Protect the Earth's atmosphere" deals with both local and global aspects. The "Environmental Education Fund" has also been set up to promote environmental education initiatives.

390. The curriculum autonomy at the secondary level (fifth to eighth grades) introduced in 1993 - allowing the school forum in compulsory general schools (consisting of equal parent and teacher membership) and the school committee in general secondary schools (consisting of three pupils each from the ninth grade upwards, parents and teachers) to make autonomous decisions with regard to the curriculum was an important step towards the joint democratic organization of educational subjects. The school authorities provide the framework within which schools can autonomously fix their own focal points. In addition, the authorities examine the autonomous curricula to ensure that comparability of leaving certificates is maintained and that the interests of pupils and persons responsible for their education, going beyond the scope of the school in question, are given sufficient consideration.

391. The discussions on school autonomy and its effects on the position of children in the school environment has clearly shown the different interests of the various partner groups and has led to the conviction that at least a right for secondary schoolchildren to be heard should be introduced in the school partnerships in order to take the concept of full participation in the sense of the agreement into account. Within the framework of this pupil involvement in administration, children not only have a right to be informed of all issues affecting them but also to have their ideas on the organization of education heard by the teachers. Also, every pupil can make suggestions or comment on the proposals of the teacher or other pupils. All pupils are also entitled to participate in organizing school life in the form of projects on political, civic and cultural education or on "social learning" or on leisure activities.

392. At all schools, pupils from the fifth grade upwards participate democratically in the organization of school life, directly and through their pupil representatives at class level (class speakers). From the ninth grade upwards they also elect pupil representatives at departmental level (department speakers) and school level (school speakers). The pupil representatives have the following rights vis-à-vis the teachers, school director and school authorities:

Right to be heard;

Right to any information regarding matters affecting the pupils in general;

Right to make proposals and statements;

Right to participate in the organization of classes;

Right to participate in the selection of teaching aids.

The school speakers have even more participation rights: the right to attend staff conferences, the right to participate in decisions regarding the transfer of a child to another class (as a punishment), and the right to participation in decisions regarding the expulsion of a child.

393. In addition, the school speaker and his/her two deputies are members of the school committee which, apart from having an advisory capacity, also has the right to participate in decisions. For instance, the school committee decides on the organization of school events that last for more than one day, or on the school regime, but also on all issues of school autonomy, for example, as regards curricula or the five-day week.

394. In addition, the Schülervertretungengesetz (Pupils' Representation Act) provides for the representation of pupils at the regional and national levels. Members of representative bodies are elected by the school speakers of the general higher schools, of the vocational middle and higher schools and of the institutes for the training of educators and teachers. Along with the duties assigned to the regional and federal pupils' bodies, they have particular rights which include: advising the school authorities on fundamental questions relating to teaching and education, submitting opinions on draft

bills and decrees, making suggestions on the issuing of laws and decrees, presenting wishes and complaints, and the planning and carrying out of further education events for pupils' representatives.

395. Under resolution E 156-NR XVIII.GP, 2.c, (see chap. I, above), more possibilities are to be created for pupils to participate in decision-making. In compliance with this mandate, it was recently decided that teachers, parents and pupils may participate in the appointment of school principals by submitting a written comment on each of the candidates to the regional school board.

Freedom of science - private schools

396. "Knowledge and its teaching are free. Every national who has furnished in legally acceptable manner proof of his qualification has the right to found establishments for instruction and education. Instruction at home is subject to no such restriction. The Church or religious society concerned shall see to religious instruction in schools. The right to supreme direction and supervision over the whole instructional and educational system lies with the State" (art. 17 of the Basic Constitutional Law). This article of the Constitution is of significance for the basic structure of the Austrian school system in several respects. On the one hand, it postulates the freedom of knowledge and its teaching, and on the other, is the basis of the principle that the State must both allow privately run schools and respect the right of deregistration from state schools in favour of home tuition. In addition, it establishes that religious instruction in schools must take place within the sphere of influence of the relevant church or religious community, and in the final sentence lays down the principle of state sovereignty with regard to tuition, as opposed to church supervision as was the case in former times. Schools can thus be described as state institutions and a sphere of the State's sovereign activity. This is manifested by the fact that the State is entitled to order compulsory schooling, and also by the fact that successful completion of certain types of school is linked to certain rights, such as the right to be admitted to university.

397. The establishment of private schools under the Privatschulgesetz (Private Schools Act), Federal Law Gazette No. 244/1962, requires, on the one hand, that conditions laid down in it with regard to the school board, the director and teachers, classrooms and teaching material must be met. If the legal requirements are fulfilled, the establishment of a teaching institution and the teaching of classes therein are guaranteed. Parents may enrol their children in a private school or even have them taught at home. However, children who have received home schooling must take examinations conducted by state teachers at the end of every school year.

C. Leisure, recreation and cultural activities (art. 31)

398. In general, the natural environment provides plenty of suitable areas for children and young people to play and to work off their need for physical exercise. In urban areas, however, the need for appropriate facilities is hardly taken into account. In some communities and towns in Austria, children and youngsters are now invited to participate in the planning process prior to

the construction or design of school buildings, traffic, residential and leisure facilities, but only to a very moderate degree. Furthermore, there are endeavours on the part of some committed architects to create binding standards whereby suitable areas are reserved for playgrounds, etc. in the planning of public or residential areas.

399. In some of the Länder, there are mandatory regulations for housing and residential construction concerning the provision of playgrounds for children; in general, there is at least the empowerment of architectural design enabling planners to provide adequate public playgrounds and sports areas suitable for children and young people. In Lower Austria and Upper Austria, communities are obliged to construct at least one public playground for children. In Styria, at least one public playground and public sports facilities have to be provided in built-up areas with more than 1,000 inhabitants. Communities with smaller populations should also have at least one public playground, which is why statistics show that in this Land there is a public children's playground per 1,000 inhabitants.

400. The child's right to peace and leisure, to play and to age-adequate active recreation is very important in Austria. For example, every Land has its own youth department which is in charge of youth activities. Its task is to promote the development of children, adolescents and young adults by providing suitable advisory and material assistance to stimulate self-initiatives, and to support the families in the exercise of their educational duties, particularly in the field of recreation. Under youth welfare legislation, public youth welfare authorities should cooperate closely with the institutions for out-of-school youth education and other institutions for the care and development of minors in the fulfilment of their duties.

401. The biggest children's recreation activity in Europe, the "*Wiener Ferienspiel*" (Vienna holiday games), a festival for children and parents, takes place in Vienna during the summer holidays (from early July until early September). Children can choose from amongst 9,500 activities offered within the framework of "*Wien spielt*" (Vienna plays), "*Jugend in Wien*" (Youth in Vienna) and "*Spielebox*" (Game box). In 47 municipal parks, children can participate in the project "Games in the park"; 8 to 14-year-olds build a children's village called "*Flodo*" in the artists' quarter. In order to give children and their parents an opportunity to play together, family games are organized. Within the framework of an integration project, disabled children can also be integrated and participate in these games.

402. In recent years, a considerable number of baby and children's hotels, hotel kindergartens and other youth recreation activities have been established. The "holiday on the farm" has always provided city children with plenty of opportunities to satisfy their need for physical movement and adventure. Meanwhile, the Austrian tourist industry has discovered a market niche, namely, baby and children's hotels, hotels for parents with children and hotels with integrated kindergartens, equipped with all the facilities necessary for children, such as safe appliances and sockets, children's toilet seats, coat hooks and towel rails within the reach of children, and babyphones. In addition, an extensive entertainment programme for children is offered, e.g. handicrafts, drama groups, pony riding and many other things.

403. The Austrian youth hostels association organizes a youth recreation activity for young workers in need of recreation, at which the young people are taught about work-outs, healthy diet, mental training and sensible, active leisure activities. For children with school problems, so-called learning holidays are organized, where study for examinations that must be repeated can be combined with sports and other leisure activities. In general, great efforts are made to make youth hostels attractive for families with children (playgrounds, beds for small children and play areas for children).

404. At home, children and adolescents spend most of their leisure time consuming what the media offer: 12- to 14-year-olds, for example, are the most intensive radio listeners with 71 per cent of this age group listening daily. About 60 per cent of three-year-olds and almost all four-year-olds are regular viewers of television programmes: on the list of the most common leisure activities, watching television comes third with 80 per cent (first: homework, second: playing with friends/brothers and sisters, and fourth: listening to music (76 per cent)). The average daily viewing time of 3- to 14-year-olds is 90 minutes, the main viewing time of children is between 6 p.m. and 10 p.m. In terms of popularity, cartoons come before youth and children's programmes; next come movies and sports programmes, followed by crime stories and serials. The national broadcasting company (ORF) is legally bound to provide special programmes for children. Currently, the children's programme runs from 6.30 a.m. to 9 a.m., and from 1 p.m. to 5 p.m. ("Confetti TiVi") plus 10 minutes of news for children ("Mini-ZiB"). The ORF children's programme has a coverage of 10 per cent, i.e. a market share of 38 per cent between 3 p.m. and 5 p.m.

405. Only a few cinemas offer special children's movies (Votiv Kino, Kosmos Kino, Moviemento). Going to the cinema becomes interesting only when children grow older: 40 per cent of 7- to 15-year-olds never or hardly ever go to the cinema, 1 per cent go (almost) every week, 17 per cent go once a month, and 42 per cent go to the cinema less often. Movies for children are subject to the Children and Adolescents Protection Acts of the Länder: children under the age of six are generally not allowed to go to the cinema, although for certain events this ban is lifted: the age limits for movies (over 6, over 10, over 12, over 14) are determined by a commission at the Federal Ministry of Education.

406. The Austrian Film Promotion Fund, in close cooperation with the national broadcasting company (ORF), tries to promote Austrian (children's) film productions, and movies, documentaries and youth films associated with the city of Vienna are promoted by the Vienna Film Promotion Fund. At children's film days and children's film festivals (e.g. the annual Vienna Children's Film Days), special and often internationally successful films for children are shown which try to portray the specific situation of children and help them understand situations and sites of action, so that they can develop a feeling of community and togetherness. Within the framework of media education in schools, children's and school film festivals are held as well.

407. In Austria, videos are distributed by about 100 outlets of international video distributors. Amongst the young consumers, the 7- to 15-year-olds are the greatest users of the video supply: 35 per cent of this group watch

videos for one to two hours per day, with an average viewing time of 72 minutes. For more details about restrictions under the Children and Adolescents Protection Acts, see chapter IV, section O, above.

408. Children's and youth theatres are not very popular with Austrian children. In 1985, 78.8 per cent of 6- to 9-year-olds had never been to a theatre. Theatre for children is offered mainly by free-lance theatre groups or by the departments for children's and youth plays of the regional theatres, and irregular children's theatre festivals improve the range of children's theatre offered in the short term. At four locations in Vienna the Theater der Jugend (Theatre for the Young), an Austrian model theatre established in 1934, offers its more than half a million young visitors productions that are suitable for primary and secondary pupils and students. Part of the success of this theatre is its close cooperation with the schools and teachers.

409. The Austrian publishers, including eight publishers of books for children and young people, launch about 150 to 200 books for children and young people every year. The reading of such books is promoted mainly by an excellent network of public libraries, and not least by the establishment of an international institute for children's literature and reading research (Children's Literature House), by the Catholic Studies and Counselling Office for Children's and Juvenile Literature, and by the Austrian Children's Book Club (founded in 1948). Additional impulses for children's and juvenile books come from the Austrian children's and young people's book award, the Austrian state award for children's and young people's literature, the children's and young people's book award of the City of Vienna for illustrations, as well as the Carinthian award for children's and young people's literature and the juvenile literature award of the Styrian government. For children who enjoy leisure reading, regular children's book exhibitions with opportunities for undisturbed reading are organized regularly by some towns.

IX. SPECIAL PROTECTIVE MEASURES

A. Children in distress

1. Refugee children (art. 22)

410. In compliance with a resolution by the Austrian Federal Government of 1991, Austria still stands up for accepting political refugees, but with the restriction that hospitality cannot necessarily "apply to immigrants who have left their home country for other reasons or who have already been accepted by other countries".

411. In 1994, a total of 5,082 applications for asylum were made in Austria, and in 1995 the number rose slightly to 5,920. Styria is exemplary for asylum applications by minors (under 19 years of age), where 50 of a total of 143 minor asylum seekers were aged between 14 and 19 in 1994, and 82 of a total of 206 persons were aged between 14 and 19 in 1995. With very few exceptions, the asylum seekers over the age of 14 were unaccompanied minors. However, the asylum statistics in Austria do not differentiate between accompanied and unaccompanied asylum seekers and refugees.

412. After legal immigration into the country - minors are subject to the same conditions as adults - refugee counsellors are available to assist aliens on issues regarding the right to asylum. Early application for asylum ensures a preliminary residency permit, given that all other legal requirements are met. Needy aliens who have submitted an application for asylum and meet all other criteria are granted humanitarian support within the framework of the Bundesbetreuungsgesetz (Aliens' Support Act), Federal Law Gazette No. 405/1991, passed by the National Assembly on 9 July 1991, until the application for asylum has been dealt with.

413. Under the binding Convention on the Legal Status of Refugees (Federal Law Gazette No. 1955/55), as amended by the Supplementary Protocol on the Legal Status of Refugees (Federal Law Gazette No. 78/1974) read in conjunction with section 37, paragraph 2 and section 54 of the Aliens Act (as amended by 1994/505), the rejection, expulsion or deportation of an alien is prohibited to any country in which there is good reason to believe that his life or his freedom would be in danger for reasons of race, religion, nationality, membership of a particular social group or political opinion. Furthermore, section 37, paragraph 1 of the Alien's Act also prohibits the rejection, expulsion or deportation of an alien to another country if there is good reason to believe that he would risk being subjected to inhuman treatment or punishment or the death penalty in that country.

414. Naturally, these protective mechanisms apply also and in particular to children under the Convention. The federal law on the granting of asylum (Asylgesetz 1991 (Asylum Act) as amended by Federal Law Gazette No. 1994/610) regulates the legal status of minor asylum seekers. According to section 13, paragraph 1 of the Asylum Act, applications for asylum may be submitted by unaccompanied aliens over the age of 14; under section 13, paragraph 2 of the Asylum Act, representation of under-age asylum seekers is by law incumbent upon the local youth welfare office if their interests cannot be defended by their legal representative. If an unaccompanied alien under 14 submits an application for asylum, the question of whether it shall be granted must be decided in the first place by the competent youth welfare authority.

415. In terms of substantive law, access to the asylum process is guaranteed by being actionable. However, the personal capacity of the applicant to take part in legal proceedings corresponding to the mental capacity under civil law is also required, which children do not generally have under the Convention. Thus they can only assert their rights and obligations in the asylum process through a legal representative. Therefore, section 13, paragraph 2 of the Asylum Act provides for the appointment of the local welfare office as legal guardian for the duration of the asylum process, in order to ensure the minors' special need for protection - inasmuch as their interests are not represented by their legal guardian. In addition, the applicant must be guaranteed the necessary support in the protection of his rights during the process.

416. Unaccompanied minor refugees have no possibility to apply for family reunification with their parents who are still abroad.

417. In the event of asylum being granted, minors - as recognized refugees - have to be guaranteed vocational and social integration. This means that they

have equal access to the labour market and, if applicable, to support from public funds. Minor aliens who are legally resident in Austria are subject to compulsory education. Language and integration classes are provided for refugees and war refugees within the framework of federal assistance rendered by the Federal Ministry of the Interior, together with partner organizations, thus allowing an easier transition from assistance to an independent life.

418. If the application for asylum is rejected, the Aliens' Department must be notified immediately. This also applies in the case of unaccompanied minors if their application for asylum is rejected. The consequence of this is that provisions on aliens (including expulsion, residence ban, custody prior to deportation) can be fully applied to the minors. In special cases, however, it is possible to grant a limited residence permit (which can be extended) for the federal territory, if deportation is legally or practically impossible, or if deportation of the alien is unreasonable for important reasons (sect. 8, Asylum Act).

419. Section 71 of the federal law governing the immigration and residence of aliens (Fremdengesetz, Aliens Act, Federal Law Gazette No. 1992/838, as amended by 1994/505) includes special provisions for minors. In immigration procedures (granting and withdrawal of residence permits, within the framework of special provisions for the immigration and residence of EEA citizens and measures to prevent immigration, terminate residence and effect deportation) minors have full mental capacity on reaching the age of 16 (formerly on reaching the age of 18). Furthermore, they are entitled to consult a legal representative or a person of their trust in verbal proceedings.

420. Minors under the age of 16 whose legal representatives are unable to protect their interests may participate in procedures that are in their favour only on their own behalf. Therefore, if children have no legal representative, i.e. they are unaccompanied, the counsel of the youth welfare office in the capital of the Land in which the minor lives is automatically appointed in compliance with section 71, paragraph 3 of the Aliens Act.

421. Apart from legal guardianship in immigration procedures, it is generally possible to appoint a counsel for minors in individual procedures connected with the care, education, legal representation and estate of the minor if the welfare of the minor is threatened by the behaviour of the parents. This would be the case, for example, if the minor is abandoned or left behind without supervision. In such cases, the court may appoint either a guardian or a counsel, usually the welfare office.

422. There are also special provisions for taking minor aliens into custody prior to deportation (sect. 47 of the Aliens Act): aliens under the age of 16 may be taken into such custody only if accommodation and care appropriate to their age and development are guaranteed. Basically, minors kept in custody prior to deportation must be separated from adults. However, if the parent of a minor is also taken into custody, the family must be kept together.

423. Since in recent practice greater priority has been given to the provision of appropriate accommodation as an alternative to taking minors into custody prior to deportation, the treatment of minors pursuant to the

Convention is respected in this field, and thus the mandate extended by the Austrian National Assembly (resolution No. 156 of 14 July 1994) to the Federal Government to implement article 37 (b), (c) and (d) of the Convention on the Rights of the Child, and to provide adequate accommodation and to implement legislation in a humane manner is complied with.

424. Minors and unaccompanied minors whose application for asylum has been rejected with final effect but who cannot be deported for legal or practical reasons and minors who are not covered by the federal assistance scheme are entitled to public welfare under the principle of territoriality (sect. 3 of the Youth Welfare Act). In addition to other social services, this includes accommodation in homes or other institutions, health care, support in education and vocational training, or pocket money to cover minor personal needs of minor aliens over the age of fifteen who are accommodated in institutions or homes.

425. The competence of the authorities and the applicable laws in the field of the protection of minors result from the Hague Convention of 5 October 1961, Federal Law Gazette No. 146/1975, which is binding for Austria.

426. In this context, it must be pointed out that the Austrian Parliament in its resolution No. 156 of 14 July 1994, requested the Government that:

(a) "In view of art. 22 of the United Nations Convention on the Rights of the Child, it be assured by appropriate measures that minor applicants for asylum and refugees are granted adequate protection and humanitarian assistance, and that;

(b) In view of a given need, efforts be made to ensure that the measures listed in subparagraph (a) also be taken at the Land level, in particular by setting up an appropriate assistance structure".

427. In this context, for example, efforts to establish a "clearing office" and the provision of accommodation facilities with youth welfare standards and (psycho-) social care facilities for unaccompanied minors, as well as the introduction of adequate interviewing of minors in the asylum process should be taken into account.

428. As a consequence of the war in the former Yugoslavia, a wave of war refugees came to Austria. Because of the acute danger resulting from the ongoing armed conflict, the Austrian Federal Government granted aliens coming to Austria from Croatia and particularly from Bosnia and Herzegovina a special status as war refugees under which they were granted limited residence in Austria without having to apply for asylum. In fact, all those who were forced to flee from this region since 1993 because of the armed conflict have been accepted by Austria and have received support under a special programme of the Federal Government and the Länder. By the end of October 1993, a total of 43,000 war refugees were being supported by public funds within and outside the framework of the asylum process. If those who found accommodation with relatives and friends and who did not claim support are included, the total number of refugees from this region in Austria increases to about 73,000.

429. In addition, integrational homes for recognized refugees were established, families with children having priority in the allocation to such homes. In Vienna, dozens of war refugee families with children found new accommodation in a specially adapted "integration house".

430. Unaccompanied minor aliens who fled to Austria from Bosnia and Herzegovina after 1 April 1992 as a result of the war in the former Yugoslavia receive financial support within the framework of "Temporary protection" (a contractual agreement between the Federal Ministry of the Interior and the individual Länder). In this action, accommodation and support are guaranteed by the Land concerned in collaboration with the local welfare office.

2. Children in armed conflicts (art. 38)

431. As Austria holds the view that the participation of 15-year-olds in hostilities as soldiers is incompatible with the principle of the prime importance of the child's welfare, as laid down in article 3 of the Convention, Austria submitted an interpretative explanation when ratifying the Convention, stating that Austria as a nation would not avail itself of the possibility provided by the Convention of setting an age limit of 15 years for participation in hostilities. On the basis of current constitutional legislation (art. 9 a, para. 3, B-VG): "Every male Austrian citizen is liable for military service". Austria further stated that only male citizens are subject to military service and female citizens are therefore excluded from participation in armed conflicts.

432. Under article 38, paragraph 2, the States parties to the Convention are only obliged to ensure that persons under the age of 15 do not take a direct part in hostilities. This is in accordance with the provision for the protection of children in international armed conflicts (art. 77) as stipulated in Protocol I (of 1977) Additional to the Geneva Conventions of 1949, but which falls short of article 4, paragraph 3 (c) of the Additional Protocol II (of 1977) concerning non-international armed conflicts, which prohibits children under the age of 15 from taking both a direct and indirect part in hostilities. Furthermore, the fact that the States parties to the Convention are only asked to implement all measures possible in this respect can be regarded as a step backwards compared with the Additional Protocol II, which states that children under the age of 15 may "not be allowed" to participate in hostilities.

433. This point was strongly advocated during the negotiations of the working group (see Wehrgesetz (Military Service Act), E/CN.4/1989/48) by the International Committee of the Red Cross and Austria. However, no amendment was made owing to the resistance of those States that regarded application of the extensive standard of Additional Protocol II to all armed conflicts as an undesired modification of existing international humanitarian law and thus rejected reference to this fact in connection with international armed conflicts and the role of children in such conflicts.

434. Article 38, paragraph 3 contains a ban on the recruitment of children under the age of 15 into armed forces. Proposed amendments, which would have provided for consistent development of the basic idea behind this Convention,

namely an improvement in the situation of children and thus an increase in the minimum age for such recruitment to 18 years (or 17 at least), could not be realized. Efforts in this direction were, however, reflected in the second sentence of that paragraph, in which the States parties to the Convention are called upon, in recruiting among persons over the age of 15, but who have not yet reached the age of 18 to give priority to the oldest. This provision is in accordance with article 77, paragraph 2 of Protocol II Additional to the Geneva Conventions.

435. Under the Austrian Military Service Act, every Austrian male citizen is liable for military service from the age of 17. However, a man can basically not be called up for military service until he turns 18, and then only if he is fit for service. Voluntary military service can, however, also be done early at the age of 17, which does not require the legal representative's approval (normally the parents). As an alternative to military service, persons liable for military service are also entitled to do community service. Those recognized as conscientious objectors can do their community service in hospitals, in the emergency services, social work, helping the handicapped, caring for the elderly, the sick, drug addicts, asylum seekers and refugees, assisting during epidemics and in disasters, as well as within the framework of civil defence or other activities connected with civil national defence.

436. In the face of the insidious danger to which innocent children are particularly exposed throughout the world, the Austrian Nationalrat passed a resolution on 14 July 1995 (E 37-NR/XIX.GP), requesting that the Austrian Federal Government support a comprehensive international ban on anti-personnel mines within the framework of the Review Conference of the States Parties to the 1980 United Nations Weapons Convention, which was held in Vienna from 25 September to 13 October 1995.

B. Children in conflict with the law (arts. 40, 39)

1. The administration of juvenile justice

437. The punishment of criminal offences committed by juveniles and the special nature of juvenile court trials are regulated in the Jugendgerichtsgesetz 1988 (Juvenile Courts Act). Lawyers and public prosecutors responsible for juvenile delinquency cases must have special pedagogical skills and should also have some qualifications in the fields of psychology and social work. In the cities of Vienna and Graz, there are specialized juvenile courts. Jurisdiction over juveniles is therefore exercised by specialized court departments at all levels. At the level of the district courts, matters of domestic relations or the guardianship of minors and juvenile offences must be dealt with by the same department. The panel of jurors (eight lay justices) must include at least four jurors who are or were teachers, educators, or employed by the public or private youth welfare service; the common jury (two lay justices) must include at least one such person.

438. With regard to article 40, paragraph 2 (a) of the Convention on the Rights of the Child, reference is made to the European Convention on Human Rights, which is constitutional law in Austria under article 7, and the

constitutional principle laid down in section 1 of the Austrian Penal Code, in accordance with which a penalty or preventive measure may only be imposed for an offence that is expressly liable to punishment and was so at the time it was committed. Nor may a more severe punishment be imposed than that to which the offence was liable at the time it was committed.

439. To protect the concept of "innocent until proved guilty", which is a constitutional principle in Austria (art. 6, para. 2 of the European Convention on Human Rights), not only the principles of the rules of criminal procedure but in particular the provisions of section 7 a of the Mediengesetz (Media Act) apply, granting (victims and) suspects in certain circumstances a specific claim to damages in the case of unauthorized disclosure of their identity in media reports. The law assumes that the legitimate interests of the person concerned are also violated if the identity of a juvenile is disclosed. Section 7 a of the Media Act protects the victims of a judicially punishable offence from the publication of their names, photographs or other personal data if any interests of these persons warranting protection are being violated by such an action, and also provides for compensation of up to S 200,000.

440. Anyone suspected of a criminal offence must be informed as soon as criminal proceedings are instituted against him/her. The notification must contain the substance of the accusation and instructions as to his/her rights in the proceedings. Furthermore, the youth welfare office and the court of domestic relations or court of guardianship must be notified prior to institution of proceedings against a juvenile.

441. In trials before the courts of justice (for all penal offences generally punishable by a maximum sentence of more than one year of imprisonment) and jury courts, the accused juvenile must be assigned a defence counsel (compulsory legal representation) for the entire duration of the trial, at all events in district court procedures, if, when, and for as long as the juvenile is in detention awaiting trial or it is otherwise necessary or expedient in the interest of the administration of justice, and in particular to safeguard the rights of the juvenile. In cases where the obligation to pay the defence costs would be harmful to the future progress of the juvenile, a defence counsel must be provided free of charge.

442. In order to implement the right to a fair trial as constitutionally guaranteed under article 6 of the ECHR, penal cases are dealt with by independent and impartial courts established by law. The parents or other legal representatives of the juvenile have the right to be heard in the proceedings, to present facts, to ask questions, to file petitions and to take part in the investigative process and the proceedings, provided the accused is also entitled to these rights. If the juvenile has been arrested, he is also entitled to the presence of a person of trust during interrogations by the police and court: he must be advised of this right immediately on arrest. Persons of trust include the parents or other legal representatives, the legal guardian, other relatives, a teacher, an educator, or a youth welfare officer, a juvenile court officer or a probation officer.

443. Under the Austrian rules of criminal procedure, anyone who risks criminal prosecution or self-incrimination in pending prosecution have the right to refuse to give testimony. The right to question a witness for the prosecution and to have a witness for the defence summoned and questioned under the same conditions is guaranteed by article 6, paragraph 3 d of the European Convention on Human Rights and by the relevant provisions of the rules of criminal procedure.

444. Victims of crime who are under 14 are also entitled to refuse to give testimony (sect. 152, para. 1, No. 3 of the Code of Criminal Procedure). The aim is to take the concept of the protection of witnesses into account, particularly since the welfare of the child (art. 3 of the Convention) must always be weighed against the interest of finding the truth, especially in the interrogation of children and most particularly of those who were victims of sex crimes.

445. The introduction of the right to refuse to give testimony for psychiatrists, psychotherapists, psychologists and the employees of recognized counselling and care institutions (sect. 152, para. 1, No. 4 of the StPO) also serves to protect victims, particularly since a statement by a therapist or counsellor could endanger the relationship of trust with a child victim of physical or sexual violence he/she is treating and thus harm the child. Again the main criterion is primarily to ensure the welfare of the child through improving follow-up care for victims of crime (arts. 3 and 19 of the Convention on the Rights of the Child).

446. The child's welfare demands special consideration when a child victim of a crime is heard in court. Therefore, the possibility of hearing the testimony of young victims in the absence of the accused using video technology and in the presence of an expert (sect. 162 a) was introduced in 1993. The examining judge may commission an expert - for example a psychologist, psychotherapist or psychiatrist - to question a witness under 14 years of age.

447. Article 40, paragraph 2 (b) (v) of the Convention is complied with inasmuch as there is a right to review all court rulings and orders. Generally a (juvenile) defendant must be provided with an interpreter and free translation assistance, if he is unable fully to speak and understand the language of the court. This applies in particular to court proceedings and also if the defendant requests access to files or on notification of a court order or a petition by the prosecution. In hearings and in court examinations, an interpreter must be provided, the costs of whom the defendant shall not be required to pay.

448. The private life of juvenile defendants is protected by the officers' commitment to secrecy as well as by the possibility of claiming damages in accordance with section 7 a of the Mediengesetz (Media Act) in the event of violation. The public may be excluded from the proceedings ex officio or on application if this is necessary in the interests of the juvenile.

449. Criminal liability in Austria basically starts at the age of 14, young people under 14 are not liable to prosecution. Young people under 16 are not liable to prosecution for misdemeanours (i.e. deliberate acts which are punishable by no more than three years of imprisonment, as well as all offences caused by negligence). Furthermore, the penal regulation for all defendants is also worth mentioning, under which minor offences and offences which can be remedied are not liable to prosecution, if, from the aspect of prevention, punishment is not necessary.

450. The prosecution may dismiss a juvenile case in certain circumstances (waiver of prosecution). It may make this dismissal subject to the suspect showing a willingness to admit the offence and to make up for the consequences, especially damage (out-of-court settlement, delinquent-victim settlement); in this case, persons and offices with experience in social work, in particular the probation office, is charged with mediation between the suspect and the victim of the criminal offence.

451. Furthermore, the maximum fines and prison sentences that may be imposed under the Penal Code are reduced by half for juveniles, and there is no minimum penalty. The threat of a life sentence is replaced by imprisonment of from 1 to 10 years (if a juvenile has committed the offence after his sixteenth birthday, 1 to 15 years). Furthermore, a life sentence must not be imposed on any person who was under 20 at the time of committing the offence. In practice, the criminal courts very rarely sentence juveniles to imprisonment, mainly in cases of very severe or repeated offences. Approximately 200 juveniles (under 19) are currently in custody or prison in Austria (8 million inhabitants).

452. In certain circumstances, both the prosecution and the court are authorized to drop the charges against a juvenile. This may be done

Subject to an out-of-court settlement (delinquent-victim settlement/mediation); or

For a restricted period of probation; or

Subject to conditions which the juvenile must fulfil.

453. Conceivable conditions are the payment of a sum of money to a charitable institution, the performance of charitable services (community services), compensation for damage, other forms of remedying the offence, or participation in a further education or training course.

2. Children deprived of their liberty, including any form of detention, imprisonment or placement in custodial settings

454. Children and juveniles may only be deprived of their liberty in compliance with the laws, because minors, like adults, have a right to humane treatment and personal freedom. The Strafprozeßänderungsgesetz 1993 (Criminal Proceedings Amendment Act, effective from 1 January 1994), reinforces the rule

of proportionality for proceedings for taking and detaining suspects in custody until trial and their exceptional nature. Measures to arrest, detain or imprison a juvenile may only be taken as a last resort and only for the shortest periods, and there are many other measures to resort to in preference to sentencing to imprisonment. Shorter periods of detention and obligatory investigative hearings (for the periodic examination of the conditions of detention) have been introduced: the maximum permissible term of detention pending trial in the case of a juvenile is three months (one year for major offences).

455. As a result of Austrian and international experience that criminal behaviour in juveniles is of a "transient", i.e. temporary, nature, the Austrian judicial system tries to eliminate punishment in the area of minor and moderate criminality by applying formal State reactions, unless the juvenile delinquent shows a strong tendency towards lack of moral values. Punishment in general, and imprisonment in particular should, under the Juvenile Courts Act, be restricted to the (narrow) range of moderate delinquency with demonstrated lack of values and to the field of major delinquency. Furthermore, neither custody nor detention on remand must be imposed on juvenile delinquents if the same purpose can be achieved with less severe measures (e.g. orders under family law or youth welfare law). Since it has been observed, particularly amongst juveniles, that even short-term detention can cause severe shock, detention on remand may only be imposed on juveniles after a careful investigation of the individual's situation and if the disadvantages for the personality and progress of the juvenile are not disproportionate to the seriousness of the offence and the expected punishment (Juvenile Courts Act, sect. 35, para. 1).

456. Juveniles sentenced to imprisonment are detained in special prisons or in special departments of normal prisons. Juvenile prisoners must be separated from adult prisoners. They are permitted to receive one visitor for one hour at least every week, receive schooling if necessary, and have the opportunity to complete a vocational training course in the special prisons.

457. Letters written or received by prisoners are generally only to be monitored if this is necessary in order to remove forbidden deliveries of money or other objects contained therein. Letters addressed to public offices, lawyers or other care offices by prisoners may only be opened if there is a reasonable suspicion of forbidden deliveries of money or other objects, and only in the presence of the prisoner.

3. The sentencing of juveniles, in particular the prohibition of capital punishment and life imprisonment

458. In Austria, the death penalty has been abolished completely. It is not permissible to sentence persons who committed an offence before their twentieth birthday to life imprisonment.

459. With regard to penal practice, attention is also drawn to the above explanations (art. 40, paras. 3 and 4 of the Convention).

C. Children in situations of exploitation, including physical and psychological recovery and social reintegration

1. Sexual exploitation and sexual abuse (art. 34)

460. Intercourse and any form of sexual activity with or in the presence of a minor is liable to severe punishment. The protection of children against the misuse of care positions (parents, legal guardians, teachers, officials) for sexual purposes, including sexual activities with third parties, is also guaranteed by the Penal Code. The offence of sexual intercourse with minors is covered by section 206 of the Penal Code, under which, in severe cases, the offender is to be punished with imprisonment of between 5 and 15 years or between 10 and 20 years. Section 207 provides for the punishment of any person who abuses a minor sexually in a way other than having sexual intercourse. In cases of a special personal relationship between the offender and the minor victim, for example, if the victim is the offender's own child, adopted child, stepchild or ward, or if the offender takes advantage of the fact that the minor is being instructed, trained or supervised by him/her to induce the child to engage in sexual activities with other persons, section 213 of the Penal Code ("Pandering") applies.

461. By an official notification from the (former) Special Rapporteur on child prostitution, child pornography and the sale of children, in 1992 the Austrian Federal Government was informed of an advertisement placed by an Austrian-based airline for Thailand as a destination, saying: "From Thailand - with love". The advertisement - designed by a well-known Austrian cartoonist - showed a young topless Thai girl framed by a heart. The Federal Minister of the Environment, Youth and the Family expressed its concern at the presentation of Thai children as potential sex objects for tourists, especially at a time when it was stepping up efforts to fight child pornography and child abuse. The carrier reacted promptly and stopped the promotion immediately.

462. The Austrian Pornography Act and the Penal Code both contain provisions penalizing the production and distribution of child pornography, i.e. pornographic presentations of persons under 14 years of age. Section 1 of the Pornography Act provides for imprisonment of up to one year for the production and distribution of indecent publications, pictures, motion pictures or other indecent objects for profit. In accordance with court case-law, presentations of sexual acts are generally to be regarded as "indecent" within the meaning of this provision, if these acts involve minors (so-called "hard-core pornography").

463. In connection with the negotiation of the Convention on the Rights of the Child, the Austrian Nationalrat unanimously passed a resolution (E 60-NR/XVIII. GP) on 26 June 1992 requesting the Federal Government to take all necessary steps - including legal measures - to prevent and punish child pornography. This parliamentary initiative was prompted by a study commissioned by the Federal Ministry of the Environment, Youth and the Family (codenamed "'Bud': Child pornography in Austria"). The study is a shocking documentation of the trade in "kiddy-porn" videos at both the commercial and

private levels. A presentation of the material collected in the course of the investigation gave rise to the parliamentary resolution just mentioned.

464. In order to fight more effectively the formation and expansion of a video market focusing on pornography involving children, and the sexual abuse of minors connected with it, Parliament passed a specific provision regarding "pornography involving minors" (sect. 207 a, Penal Code) on 16 July 1994 (= on 1 October 1994 an amendment to the Penal Code came into force whereby not only the production and every form of dissemination but also the possession of pornographic material involving minors are subject to criminal prosecution). This is in keeping with the resolution of the Nationalrat, with Recommendation R (91) 11 of 9 September 1991 of the Committee of Ministers of the Council of Europe, and with a resolution passed by the European Parliament.

465. The new section 207 a of the Penal Code imposes criminal penalties not only for the commercial but also the amateur production and distribution of child-pornography (non-commercial exchange and black market), thus enacting an absolute prohibition on trade in child pornography. Under this section, all child pornography is considered an offence, i.e. not only real "kiddy porn", but also material giving an objective spectator the impression that its production involved the sexual abuse of a child/minor. Moreover, the legislator considered it necessary to punish the possession and/or acquisition of child pornography. Section 207 a establishes a penalty of up to one year of imprisonment for the production and distribution of pornographic presentations with minors, and imprisonment of up to six months for the procurement or possession of material showing pornographic acts with minors. On the one hand, this was intended to be a clear signal for society to ban such products. On the other hand, it should dry up the market for such products, because those who purchase "kiddy porn" contribute to the creation and maintenance of a "market" - and indirectly also contribute to the abuse of children.

466. Even if a State merely tolerates the consumption of pornography involving children, this stimulates or at least keeps up the demand for such products and constitutes an incentive for producers and distributors of child pornography. For this reason, the new regulation was passed to dry up this market by also penalizing the possession and acquisition of "kiddy porn", thus contributing to the fight against the sexual abuse of children for the production of pornography worldwide. With these new regulations, Austria has given a clear signal to both the Austrian people and the international community.

467. The Penal Code contains a number of general protective provisions against sexual exploitation (e.g. sect. 214 "Requiring a person to engage in sexual activities with another person against payment" and sect. 215 "Requiring a person to work as a prostitute"), but no special provision on the sexual exploitation of children through prostitution. Child prostitution is therefore absolutely prohibited in Austria under the "Youth Protection Laws", as is striptease or animation by children and juveniles.

468. A special safeguard against the exploitation of prostitutes is section 216 of the Penal Code ("Procuring"), the purpose of which is to fight

procurement effectively. Any person exploiting and intimidating a prostitute or determining the conditions of her activities, or exploiting several prostitutes at the same time is threatened with imprisonment. If the offender commits the offence as a member of a gang or, by intimidating a prostitute, prevents her from abandoning prostitution, he is liable to imprisonment of up to two years.

469. Under specific provisions of the Penal Code, the kidnapping of a minor for sexual abuse or for immoral purposes (sect. 101), the kidnapping of a person in order to force a third party into an action, endurance or omission (sect. 102: Extortive kidnapping), delivery to a foreign power (sect. 103, para. 1), the slave trade (sect. 104) and (international) trafficking in human beings (sect. 217) are offences entailing severe punishment. The removal (kidnapping) of minors from the care of their legal guardians is also punishable (sect. 195).

470. Under section 217 of the Penal Code, any person who requires another person to work as a prostitute in another State (irrespective of the victim's age or gender and irrespective of whether the victim has already worked as a prostitute) or recruits such a person, is liable to punishment by imprisonment of between 1 and 10 years. Furthermore, any person who, by wilful deceit, coercion, force or dangerous threats or by taking advantage of a mistake, brings a person into another State for the purposes outlined above is also liable to imprisonment. The severe punishment established for "trafficking in human beings" serves in particular to fight the cross-border traffic in women and children for sexual purposes.

471. The problematic issue of the sexual exploitation of children and juveniles in all its forms must be dealt with not only through penalization and the consistent execution of the law, but also by increased efforts in the fields of sex education, the early detection of misuse and the counselling and care of victims of sexual abuse, for example, through support for child protection centres and shelters.

472. Based on the awareness that violence against children takes a variety of forms and constitutes a great social concern, the Austrian Parliament requested the Federal Government, in resolution E 156 NR XVIII. GP, Pt. 4, to intensify measures against the sexual exploitation of children, including international cooperation, to combat "sex tourism".

473. In line with this resolution the Austrian Parliament started an initiative against the sexual exploitation of children, including the amendment of paragraph 64 of the Penal Code, which will provide for the extraterritorial prosecution of sexual offenders who commit such crimes abroad; this regulation is expected to come into force in 1997.

474. In accordance with the Declaration and Agenda for Action adopted by the World Congress against the Commercial Sexual Exploitation of Children (Stockholm, 27-31 August 1996) the Federal Minister for the Environment, Youth and the Family, Dr. Martin Bartenstein, in cooperation with the Minister for Women's Issues, Dr. Helga Konrad, the Federal Minister of Justice, Dr. Nikolaus Michalek and the Minister of the Interior, Dr. Caspar Einem,

have committed themselves to a comprehensive plan of action to combat the phenomenon of sexual exploitation of children through sex tourism and child pornography.

2. Sale, trafficking and abduction (art. 35)

475. Cases of child kidnapping in Austria are extremely rare and take place in exceptional circumstances, such as during quarrels between parents about custody and the exercise of visiting rights by the parent who does not have custody. However, there have been no cases of child trading.

476. There is a fine-meshed net of legal provisions to protect children from such forms of injustice. Thus, the removal (kidnapping) of a minor (under-age child or adolescent) from the custody of its legal guardian and the obstruction of measures for the upbringing of the child ordered by the authorities are liable to prosecution. Arrangements for the adoption of a child in Austria as well as arrangements for the adoption of a child abroad are a matter for the youth welfare authorities. Strict criteria have been laid down for the adoption of children abroad so that, for example, in 1992 there was only one case of adoption abroad.

477. The mandatory requirement of court approval for every adoption guarantees that the legal preconditions for each adoption are examined. Under section 26 of the Federal Law on International Private Law (Federal Law Gazette No. 304/1978), these preconditions must in principle be assessed according to the status of the adopting person. If, according to the personal status of the child, its consent or the consent of a third party to whom the child is related under the Family Law is required, this law also applies.

478. In Austria, an international working group against trafficking in women has been set up at the Federal Ministry of the Interior to prepare a protection programme to assist the victims of trafficking. This programme will encourage any person to report trafficking offences and thus bring such criminal acts to the attention of the prosecuting authorities; the programme, however, is not specifically aimed at children or juveniles.

479. In Austria, there have been no cases relating to the sale of children, nor are there specific legal provisions in this respect. However, the Penal Code contains a number of general provisions that apply to the phenomenon of the sale of children, such as "Surrendering persons to a foreign power" (sect. 103), "Slave trafficking" (sect. 104) and "Withdrawal of a minor from the custody of a parent or guardian" (sect. 105).

3. Economic exploitation, including child labour (art. 32)

(a) Economic exploitation of children (art. 36)

480. Protection from (ill-advised) consumption and its dangers by limiting access to specific consumer options (i.e. through the stages of legal capacity of children and adolescents and through youth protection laws) is in direct conflict with the attractiveness of participation in the consumer world experienced by children and adolescents. A study of the Centre for Schooling and Education in Upper Austria presented in May 1993 confirms the effect of

advertising messages on children. According to this study, three-year-olds can recite an average of five commercial texts, while pupils in the third and fourth grades can recall up to 36. The result of a further experiment conducted in a Vienna school shows that 10-year-olds are capable of reciting 15 to 30 commercials completely in a period of 10 minutes. The survey group consisting of teachers could not even recite five commercials.

481. The problem of advertising for and with children is addressed in the radio law amendment of 1993 and in so-called "soft law" instruments. The Rundfunkgesetznovelle 1993 (Broadcasting Amendment Act), with which the EU guideline governing television practice was implemented nationally, should "guarantee that advertising which targets or involves children does not harm their interests". Radio and television advertising must "not harm the interests of the consumer": television commercials are not allowed to portray minors consuming alcohol and broadcasts cannot specially target minors. Furthermore, commercials must not appeal directly to minors, thus exploiting their inexperience and innocence. In addition, television advertising, which directly provokes minors to persuade their parents or third parties to purchase the advertised product or service, is prohibited. In the end, advertising must not exploit the trust established between minors and their parents, teachers, or other mentors; also, it is prohibited to portray minors in situations of danger without justifiable grounds.

482. The International Rules of Conduct for Advertising Practice (1973) have determined that advertising must "not capitalize on the innocence or naivety of children or exploit their feelings of incertitude"; "Advertising which targets children should not contain material which may cause mental, moral, or physical harm."

483. The circular "Children and advertising", printed by a voluntary consumer civic committee for jointly-attainable self-limitations within the Austrian Advertising Industry, seeks to prevent rather than merely restrict the misuse of children in advertising "as decorations, accessories, or entertainment cues". Since no psychological pressure to buy is to be exerted on children, a "direct appeal to children to pressure their parents into increased consumption" is rejected. Furthermore, children should not be persuaded that possession or consumption of a product is the highest goal in life; likewise, children must not be made to feel inferior because they do not purchase a certain product. Moreover, commercials should not implement advertising methods to exploit the bond that exists between parents and children. Finally, children must not be encouraged to endanger their health or welfare or to neglect their responsibilities.

484. In accordance with the advertising practices of the Austrian Broadcasting Company, the relevant rules of conduct instituted by the Chamber of Commerce and the circular apply to commercials broadcast on State-run television. Also, commercials "directly prompting children" (or with child imitations) are not accepted for programming. The Bundesgesetz gegen den unlauteren Wettbewerb (Federal Law against Unfair Competition) outlines no detailed conditions protecting children and adolescents, although it prohibits "unethical competition". Unethical describes behaviour on the part of the supplier which is intended to exert psychological pressure to buy or which takes advantage of the dependence of the customer on a third party. Legal

action against such behaviour can be taken neither by the consumer nor family organizations or consumer councils, but only by competitors and social partner organizations.

485. Special advertising for youth loans does not exist, although the features of a young person's account include a cheque overdraft provision and automatic teller withdrawal or transfer. In the course of the debate on the "Youth situation report" (1988), the Nationalrat called for a ban on youth loan advertising (Nationalrat resolution E 81-NR/XVII. GP of 28 September 1988). Thereupon, the Department of Finance, Loans and Insurance of the Federal Economic Chamber submitted a recommendation prohibiting loan advertising specially aimed at young persons. Banks subsequently refrained from all forms of loan and overdraft advertising with respect to youth accounts and no longer actively promote such youth services. In fact, advertising experience in Austria shows that even in the as yet unregulated areas, the worst effects of advertising on children can be halted at a very early stage by self-discipline and a critical public.

486. On 1 January 1994 special youth protection provisions (sect. 36 of the BWG = Bankwesengesetz) (Banking Act) came into force under which lending institutions were given special responsibilities in their business dealings with adolescents, thus addressing familiar problems of bank practices involving children and adolescents, particularly the sometimes irresponsible issue of cheques, cheque cards and automatic teller cards to increasingly younger persons. Under "Business dealings with youth" (sect. 36), lending institutions have henceforth certain special responsibilities:

> The issue of cheques and cheque cards for cash withdrawals to minors under the age of 18 is not permitted unless with the explicit consent of the legal representative; in the case of minors having a regular income, this is possible from the age of 17.
>
> Cash withdrawals made by adolescents from automatic teller machines are to be limited to S 5,000 weekly.
>
> The bank must examine previous account transactions before issuing cheque books.

487. At the beginning of the school year in the autumn of 1994, the Federal Ministry for Youth launched a nationwide information campaign, "The pleasure of loan payments", encouraging young people to handle money responsibly; its goal is to prevent them from slipping into so-called "debtor careers" through careless spending. Schools, several debt-counselling organizations, and all large banking institutions participated in this campaign.

488. Under the youth protection laws of the Länder it is unlawful for children and adolescents to participate in gambling (with the exception of lotteries, pools, sweepstakes, draws, etc.) and to operate slot machines from which cash winnings can be collected.

489. Further to the parliamentary discussion of the Convention on the Rights of the Child, additional protection for adolescents from the dangers of

so-called "debtor careers" concerning the business relationship between banks and adolescents - although not called for in the Convention - was discussed. In parliamentary resolution 156-NR/XVIII. GP, point 11, the Federal Government was requested to "re-examine the current situation of the law concerning legal transaction relationships between adolescents a[illegible] lending institutions or comparable businesses and present proposals for possible modifications, with the goal of improving the protection of adolescents from economic disadvantages".

(b) Child labour

490. Section 16 of the General Civil Code states very clearly "Each being has inborn rights, apparent from reason, and is accordingly to be regarded as an individual. Slavery or bondage, and the exercise of power based thereon, is forbidden."

491. From the viewpoint of labour legislation, children and adolescents as a group require particular protection. The protection of children and adolescents from economic exploitation and work which could impair their health and development is ensured in Austria by international agreements, as well as by a series of domestic laws and regulations.

492. Child labour is generally prohibited in Austria. Thus, children under the age of 15 must not perform any type of work. The employment of children solely for teaching and educational purposes as well as the engagement of one's own children in light household activities for a limited period of time (e.g. helping with the cooking, washing dishes and tidying up) cannot be regarded as child labour, provided that there is no risk of economic exploitation or the upbringing or health of the child being endangered by such activities.

493. Not included in this ban on the employment of children is the engagement of children from the age of 12 in certain light and occasional work, such as employment in a family business, running errands, assisting on playing and sports fields or collecting flowers, herbs and fruit. In each case of employment of children, the approval of the legal representative is necessary. Such employment must not endanger the child's physical and mental health and development or morals, or expose him/her to the danger of accidents or to the effects of detrimental or hazardous substances. Furthermore, the permitted employment of a child must not in any way prevent or restrict him/her from attending school. Employment is permissible for a maximum of two hours per day, and school lessons and employment combined may on no account exceed seven hours per day. In fact, prohibited "child labour" is practically non-existent in Austria; even as far as the permitted employment of children is concerned (e.g. helping in the house), very few difficulties arise.

494. The numbers of claimed violations of the Kinder- und Jugendlichenbeschäftigungsgesetz (KJBG)(Children's and Adolescents' Employment Act, Federal Law Gazette No. 599), were as follows:

Of the 4,146 cases reported in 1991, 6 related to child labour (0.14 per cent);

Of the 4,410 cases reported in 1992, 21 related to child labour (0.48 per cent);

Of the 4,131 cases reported in 1993, 17 related to child labour (0.41 per cent);

Of the 3,958 cases reported in 1994, 17 related to child labour (0.43 per cent).

495. On Sundays and public holidays as well as between 8 p.m. and 8 a.m., children must not be employed at all, unless they are participating in public exhibitions, concerts, theatre performances, photo sessions or other performances. For children to engage in these activities, an official permit must be obtained, and it must be shown that they are in the particular interests of the arts, sciences or education. The district administrative authorities, in cooperation with the works inspectorates, the municipal authorities and the school administration, are responsible for ensuring that these regulations are observed. In the event that an employer does not offer any guarantee that the legal protective provisions or the conditions prescribed by the authorities will be adhered to, he will be prohibited by the approving authorities from employing the children in any further public exhibitions.

496. The employment of adolescents, which includes children from the ages of 15 to 18, is also only permitted with restrictions. Basically, adolescents may work eight hours during the day. Their working hours at weekends, including attending a vocational school, should not exceed 40 hours (in order to obtain longer periods of free time or on account of regulations in the collective agreement, it is permissible to make exceptions, but the daily working hours must on no account exceed nine hours) (sect. 11, KJBG). If adolescents are hired to perform preparatory and final activities, they are entitled to free-time compensation. Overtime, as a result of preparatory and final activities, is only permissible in individual cases (sect. 12, KJBG). If the working hours total more than 5, the adolescent is entitled to a minimum break of half-an-hour after working 4.5 hours; after finishing his daily working hours, an adolescent is entitled to an uninterrupted rest period of at least 12 hours (sects. 15 and 16, KJBG).

497. Adolescents must not be employed between 8 p.m. and 6 a.m. This ban on night-shift work can, however, be relaxed for activities in the hotel and catering trade, multiple shift businesses, cultural performances and photo sessions, bakeries, nursing and within the framework of midwife training. For some of these jobs, the ban on working on Sundays and public holidays is lifted, but in such case the adolescent must have every second Sunday free (sect. 18, KJBG). Young employees are currently entitled to a 30 working days holiday (sect. 32, KJBG; sect. 2 Urlaubsgesetz (Holiday Act)).

498. Due to the special conditions prevailing in the hotel and catering industry, as well as well-known cases of adolescent employees overworking, an amendment to the KJBG (Federal Law Gazette No. 1992/175) came into force on 1 May 1992 which introduced a five-day week for adolescent employees and

enabled well-ordered flexibilization of work on Sundays. Work on Sundays is, however, still permissible only on 23 Sundays in the calendar year; employment on successive Sundays is to be reported to the works inspectorate. Since it emerged that adolescent employees in the hotel and catering industry were asked to grossly exceed legal working hours, inspections in this area have been intensified.

499. When employing adolescent and female workers as well as persons who are in need of special protection, such as the disabled, particular care must be taken with regard to the special requirements for the protection of their life, health and morality (Workers Protection Act).

500. The Children's and Adolescents' Employment Act prohibits physical punishment and severe verbal insults as well as the performance of piecework and the employment of adolescents for work which may endanger their health and morality (for certain businesses and activities hazardous to health, general bans on employment have been laid down for adolescents). For violations of these protective provisions for adolescents, fines of between S 1,000 and S 15,000 are imposed on the employer for first offences. Should he repeat the offence, he will be charged between S 3,000 and S 30,000 or imprisoned for a period of from three days to six weeks. Employers who repeatedly violate the above protective provisions will be officially banned from employing adolescents (sects. 30 and 31, KJBG).

501. In every business where at least five adolescents (i.e. not yet 18) are permanently employed, a youth spokesman is to be appointed, whose task it is to look after the social, health and cultural interests of the young people employed with the company.

502. There is less need for emphasis to be placed upon the protection of children and adolescents in agriculture and forestry than was the case at the beginning of the century; on the other hand, in accordance with the Domestic Help and Servants' Act, the protection of children and adolescents is still of importance. These specific protective provisions are based on the principles described above.

503. Special protection is granted by the penal protection provision contained in section 93 of the Penal Code to "younger" persons (up to the age of 18) who are cared for by a guardian or an employer: for the overworking of minors, younger persons and those in need of care, a two-year prison sentence can be imposed, if such overworking occurred, for example, as a result of malice or inconsiderateness, or endangered the lives of the persons concerned or inflicted severe bodily injury or damage to health. Abuse of the relationship arising from employment and de facto the position of authority existing between masters or employers and young apprentices, housemaids or other young employees (sect. 212, Penal Code: "Abuse of position of authority") is likewise punished under criminal law. The employer must not use his position of authority to his own advantage; abuse of this relationship of trust and authority for sexual purposes will result in a term of imprisonment of up to three years.

4. Drug abuse (art. 33)

504. Since children and adolescents require special protection from the dangers resulting from the abuse of drugs and psychotropic substances, various preventive measures have been taken in Austria in addition to the provision of legal protection. A Committee for Controlling the Abuse of Alcohol and Other Addictive Substances has been established at the Federal Ministry of Health, with the task of educating society, especially parents, teachers, and others responsible for child development, on the dangers of substance abuse and of promoting possibilities for a responsible contact with these substances.

505. Alcohol and nicotine are not considered illegal substances in Austria, which is why alcoholic beverages and tobacco products can in principle be obtained without age-related restrictions. The youth protection laws prohibit youngsters under the age of 14 from smoking and drinking alcohol in general and under the age of 16 from smoking and alcohol consumption in public. Trade regulations prohibit the serving of spirits to minors in restaurants, inns or bars, and these regulations must be openly displayed in every such establishment. As too-easy access to alcoholic drinks increases susceptibility to alcoholism, a recent initiative taken by the Federal Ministry of Health is intended to lead to a general ban on the sale of alcoholic drinks through automatic vending machines.

506. The introduction of the Tobacco Law (Federal Law Gazette No. 1995/431) took account of the harm caused by tobacco products to health, in particular to that of children. The following warnings must be printed on the front and rear sides of tobacco products, "Smoking endangers your health", "Smoking causes cancer", "Smoking damages your child's health even during pregnancy". In addition, there are now restrictions on the advertising of tobacco products. Billboard advertising of tobacco products is not allowed in the direct visibility range of schools and youth centres, advertising tobacco products is generally prohibited in cinemas during performances suitable for young people, as well as on television and radio. It is also forbidden to advertise tobacco products specifically for young people and to distribute advertising articles to children and young people in connection with tobacco products. For the protection of non-smokers from passive smoking - above all to reduce the danger to children's health (according to estimates, 50 per cent of children suffer from passive smoker syndromes such as asthma) - smoking has been banned in rooms used for instruction, training and negotiating purposes, as well as school sports activities, and in public buildings, schools or other premises where children and adolescents are supervised or accommodated.

507. From an analysis made in the Second Austrian Youth Report (Report on the Situation of Young People in Austria, Federal Ministry of the Environment, Youth and the Family, 1994) of - hardly available - data in Austria, the cautious conclusion can be drawn that the use of alcohol amongst young people is steadily declining. However, this is more a phenomenon amongst young people with a better education. Drug abuse, however, is found in all age groups (mainly in girls and women) as an increasingly "popular" form of combating stress, general dissatisfaction and other inconveniences.

Survey of alcohol-related consumption habits in young people

Land (period) group	No alcohol consumption	Current daily alcohol consumption
Vienna (1988-1990) 15-19-year-olds	17-18%	11%
Upper Austria (1988) 15-19-year-old apprentices and school pupils	31%	4%
Lower Austria (1989) Apprentices and pupils	38%	3%
Tyrol (1991) 15-19-year-olds	13%	8%

Source: Report on the Situation of Young People in Austria, Federal Ministry of the Environment, Youth and the Family, 1994.

Survey of tobacco-related consumption habits in young people

Group	20 cigarettes per month	Up to 10 cigarettes daily	10 to 20 cigarettes daily	20 + cigarettes daily
14-19-year-olds	32%	23%	42%	3%

Source: Report on the Situation of Young People in Austria, Federal Ministry of the Environment, Youth and the Family, 1994.

508. Austria has not been spared globally increasing drug-related crime and its negative effects. Whereas in 1991 "only" 218, and in 1992 543 young people between the ages of 14 and 18 were charged with drug-related offences, this number rose to 857 in 1993, 1,004 in 1994 and 1,076 in 1995. The percentage of all young people under the age of 18 charged in relation to the total number of individuals charged in 1991 amounted to 4 per cent, increasing to 7 per cent in 1992 and 7.9 per cent in 1993. In 1994 the figure was 7.4 per cent and it increased to 8.2 per cent in 1995. Of the 241 drug-related deaths recorded nationwide in 1995, 20 involved young people under the age of 19.

509. To combat drug addiction, the authorities are applying a method called "Therapy instead of punishment": if drug abuse is suspected, the health authorities intervene and refer the person concerned to a specialist. If a pupil is suspected of drug abuse, he/she can be requested by the school director to submit to an examination by the school doctor. If the pupil or his/her parents refuse such an examination, the director must inform the health authorities. If a medical examination reveals that the individual concerned is addicted, the authorities will arrange for treatment. If the

individual is not addicted, but medical treatment for substance abuse is advisable, the health authorities can - with the parents' permission - prescribe therapy. At the same time, counselling and advice by an addiction treatment centre is recommended to the individual. The parents of an addicted minor must see to it that their child undergoes medical treatment or observation.

510. Drug abuse and drug dealing are offences punishable under criminal law. The cultivation and processing of plants for drug production are strictly prohibited; violation of these laws is punishable by heavy fines. Production, import and export, purchase and possession of drugs, as well as the entrustment or distribution of drugs to others, are punishable by law with sentences of up to six months' imprisonment.

511. If legal proceedings are instituted against an individual for possessing a "small quantity" of drugs, the public prosecutor can, in certain conditions, temporarily drop the charge for a probationary period of two years, provided the individual: obtains advice from a drug addiction expert, indicates willingness to undergo medical treatment or supervision, or shows willingness to receive counselling from a probationary officer or an addiction treatment centre. If the individual does not keep his/her promises or commits another drug-related crime within the probationary period, criminal proceedings will be instituted.

512. Every form of public propaganda encouraging drug abuse is illegal under section 15 of the Narcotic Drugs Act. If an adult who is more than two years older than the "seduced" minor facilitates the minor's drug abuse, he/she faces up to three years' imprisonment (sect. 16, para. 2, No. 1). Likewise, persons who conduct "small deals" as a source of income or as members of a gang are also liable to punishment. Individuals who purchase or who are in possession of a "large quantity" of drugs can be sentenced to up to three years' imprisonment if the "stuff" was intended for resale. Even the mere conspiring and teaming up of one or more interested parties for the purpose of common drug dealing ("two-member", "three-member", "four-member" gangs, etc.) are enough to warrant up to five years' imprisonment.

513. To fight the professional drug trade more effectively, stiff penalties such as up to five years' imprisonment have been introduced for the production, import or export, and sale of "larger quantities" of drugs. If dealing is a steady source of income for the dealer or if he/she is a member of a drug ring, he/she faces up to 10 years' imprisonment. If the dealer is only doing "big business" to satisfy his/her own drug needs, the prison sentence "only" ranges up to five years. Previously convicted, but still active members of a drug ring, members of cartels and large-scale dealers (25 times the normal amount = excessive) face prison terms of up to 15 years. The Narcotic Drugs Act provides for the punishment of cartel bosses with prison terms of between 10 and 20 years. In addition to imprisonment, dealers receive fines of up to S 1 million and in some cases S 2 million. Drugs found in the dealer's possession, and the vehicles used to smuggle them are confiscated.

514. The 1993 Criminal Law Amendment Act provides an additional tool in the fight against the international drug trade. In accordance with this Act

"money laundering" organizations are to be steadily prosecuted and the persons involved rigorously punished. An amendment to the Narcotic Drugs Act is being prepared, under which drug users are offered medical and psychological treatment and the public prosecutor is given the possibility to drop criminal charges if further counselling of the addicted individual is ensured. Above and beyond this, additional psychotropic substances, such as stimulants and psychiatric drugs, will be added to the list of prohibited narcotics, in order to halt the extensive trade in such substances. Also, intensified availability of information in schools and on emergency hotlines ("Drug lines") will be established for addicts.

515. Drug addicts receive the necessary medical counselling in specialized drug clinics. In addition, attempts are being made at reintegrating children and adolescents addicted to illegal and prescription drugs into drug-free life in half-way houses and special projects ("Green circle"). A drug monitoring station (Suchtgiftüberwachungsstelle) has been established in the Federal Ministry of Health, Sports and Consumer Protection, where reports can be recorded centrally of all persons who have violated the Drug Act, with the exception of individuals who voluntarily undergo therapy. In 1994 the Federal Ministry for Youth started a project with the aim of establishing additional preventive approaches in out-of-school youth work. By accompanying children and young people in the critical period, when they are searching for an identity, an important contribution can be made to preventing addiction. Primary addiction prevention in particular is not regarded as a form of protection pedagogy in this context, but rather as a means of making existing personal and structural resources visible and expanding them. As well as the training of multiplicators, above all parents, relatives, teachers, educators and youth leaders, in the field of primary addiction prevention, a research project is currently being conducted concentrating on the onset of child and adolescent addiction, addictive behaviour, and economic and social influences.

516. In the light of the alarming developments on the drug scene, the Vienna Health Administration declared 1995 to be the Year of Addiction Prevention. A specially-designated local office provides courses at the municipal public health department by teachers, tutors, social workers, and firm representatives for the purpose of improving drug prevention and coordinating the work of existing therapy institutions. Among other measures, a team of specialists at a Vienna children's clinic offers specific assistance to addicted pregnant women and their addicted babies.

D. Children belonging to a minority or indigenous group (art. 30)

517. In Austria, ethnic groups and minorities are protected by a series of ethno-specific constitutional and general minority protection provisions (banning discrimination, encouraging the preservation and fostering of national traditions, permitting the use of one's native language as the official language, classes in the native language, etc.). In the inaugural speech of 18 December 1990, Austria explicitly declared its support for promoting the linguistic identity and cultural autonomy of its various ethnic groups. To make the situation of ethnic groups known to a larger part of the population, the Federal Government drew up a basic report on the situation of ethnic groups in Austria. The Vienna summit (October 1993) of the Council of

Europe attended by the Heads of State of its member States adopted the "Vienna Declaration" which provides for the preparation of a "general convention", intended to establish rules for the protection of national minorities. At present, Austria is taking steps to sign the Basic Convention for the Protection of National Minorities.

518. The Volksgruppengesetz (Ethnic Minorities Act) of 1976 recognizes Burgenland Croats (according to the national census of 1981: 18,648), Croats (2,557), Slovenians (16,552), Hungarians (9,708), and Czechs (4,106) as well as the Sinti (Roma and Slovaks) as indigenous ethnic groups living in Austria with a non-German native language and individual national traditions. In the majority of districts where ethnic groups are living, the value of bilingual kindergartens is increasingly being recognized. The Burgenland Kindergarten Act provides for kindergarten care in Croat and Hungarian as needed. Certain municipal kindergartens in Carinthia are set up to educate in Slovenian, and in Vienna the Czech Education Society "Komenský" runs a private kindergarten. In order to support bilingual education in kindergartens, a percentage of the costs for the training of bilingual kindergarten teachers, for the operation of bilingual kindergartens and for the transportation of children to and from these kindergartens is borne by the Government.

519. Already in the Treaty of St. Germain (1919), in the Treaty of Brunn (1921), and in the Vienna State Treaty (1955), Austria committed itself to enabling children of non-German-speaking backgrounds to receive classes in their native languages, as well as in German (minority schools). Since 1990, efforts have been made to create a uniform basis for the minority school system in a government bill establishing a minority school constitutional law. To accomplish this, some of the Länder concerned have enacted their own minority school laws. During the 1989/90 school year in Burgenland, 524 pupils were taught in Croat in 28 primary schools and 79 pupils were taught in Hungarian in two schools. Furthermore, experiments involving Croat are being conducted in three primary schools. In Carinthia, bilingual classes were given to 1,134 pupils at 62 primary schools and to 350 pupils at 15 secondary schools (German and Slovenian). Some 450 Slovenian pupils attend the secondary school established there in 1957. There is also a bilingual commercial college in Carinthia which has been set up in 1990.

520. A private bilingual primary school has been in operation in Klagenfurt since 1989. The Czech "Komenský Education Society" operates a private primary school and secondary school along with a kindergarten in Vienna. Also, language courses for pre-school and school-age children have been held by the "Croatian-Burgenland Cultural Society" since 1993. Within the framework of the "school textbook campaign", not only German books but also textbooks printed in Croat, Slovenian and Hungarian are available free of charge for bilingual instruction.

E. International humanitarian cooperation and relief schemes for needy children

521. After the nuclear accident at Chernobyl, Austria launched a campaign in which thousands of children from Chernobyl were invited to stay with Austrian

families and receive medical treatment. A children's hospital in which children with cancer receive appropriate medical care was built in Kiev with the financial assistance of Austria.

522. After the collapse of the former "Eastern bloc", Austria was confronted with the enormous distress of children, mostly Romanian. To alleviate their suffering, volunteers, in a large-scale campaign, brought food, medicine and medical supplies and cared for the neglected children in the notorious orphanages. With the consent of the Romanian authorities, hundreds of children were brought to Austria for several weeks or months to receive medical care or just to spend a restful holiday. At the same time, funds were donated to the "street children project" operated in Bucharest by the Austrian Jesuit priest Georg Sporschill. Sponsored by Austria, this project offers numerous homeless children a place to sleep, individual counselling and schooling.

523. Prompted by the inconceivable destitution of civilians caused by the civil war in the former Yugoslavia, the Austrian National Broadcasting Company, together with non-profit relief organizations (Caritas and the Red Cross) and with support from the Austrian population, all the important print media and the Federal Government, launched the spectacular "Neighbour in need" campaign in May 1992, which brought more than 3,000 trucks with over 60,000 tons of food, clothing, medicine and medical supplies worth approximately US$ 100 million into the conflict areas. Also, Austrian hospitals are making beds available for the admission of wounded children flown out of war-torn areas.

524. Bosnian women and girls raped by soldiers were provided shelter and psychological counselling in Austria. At the invitation of Austrian relief organizations, such as Refugee Aid, the campaign "holiday in peace" yearly enables hundreds of children between the ages of 8 and 12 from many different war-torn countries to spend their summer holidays with Austrian families or in summer lodges and camps.

525. Since 1993, the Austrian Youth Hostel Association has conducted, together with Croatian hostel organizations, a refugee project in Pula (Croatia). Here, recreational activities are arranged in the nearby refugee camps for children from parts of the former Yugoslavia still threatened by war.

X. CONCLUDING REMARKS

526. Although one of the main purposes of the Convention is to establish minimum standards for children's rights worldwide, the Austrian Federal Government is fully aware of the need for further legislative initiatives regarding provision for and the protection and participation of children. In spite of the density of the social network and the medical and educational structure of an affluent society like Austria, and despite modern medicine, educational theories and psychology, more and more children are becoming physically and psychologically ill.

527. In the course of forming a new Federal Government, the governing parties, in the so-called Arbeitsübereinkommen (working agreement) for the nineteenth legislative period, have declared their commitment to the implementation of the Convention on the Rights of the Child. The participation of young people in all the main spheres of life affecting them is to be further developed as a matter of priority.

528. Not least owing to an extensive public debate, the Convention on the Rights of the Child has already positively stimulated and affected recent Austrian legislation, for example: the introduction of section 207 a in the Austrian Penal Code (specific legal provision regarding pornography involving minors); an amendment to the Industrial Code, Federal Law Gazette No. 194/1993; school laws; a law regulating a change of name; a draft amendment to the law on residence; a draft of a universal Carinthian local government law; the model project "Mediation and assistance for children whose parents are divorcing or separating"; a government initiative against violence in the family.

529. In this context it is worth mentioning, that in ratifying the Convention, Austria not only intended to secure children's rights at the national level, but also to ensure their observance worldwide and to express its solidarity with the other States Members of the United Nations in promoting and applying the principles proclaimed in the Charter of the United Nations and other relevant legal instruments pertaining in particular to children.
